MISSISSIPPI CODE 1972
Annotated

Ports, Harbors, Landings and Watercraft
Aviation
Motor Vehicles and Traffic Regulations

Titles 59 to 63

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME THIRTEEN A

PORTS, HARBORS, LANDINGS AND WATERCRAFT

AVIATION

MOTOR VEHICLES AND TRAFFIC REGULATIONS

§§ 59-1-1 to 63-33-3

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2022 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2022 Replacement Volume 13A of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, and in bound volume 13A as it was replaced in 1996, 2004, and 2013, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2022 Regular Session.

This volume contains the full text of Titles 59 through 63 of the Mississippi Code of 1972 Annotated, as amended through the 2022 Regular Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

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PUBLISHER'S FOREWORD

For further information or assistance, please call us at (800) 833-9844, fax us toll-free at 518-487-3584, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

September 2022 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
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— Joint Legislative Committee Notes
— Judicial Decisions
— Opinions of the Attorney General
— Organization and Numbering System
— Placement of Notes
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— Research and Practice References
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects.*

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates.*

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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CHAPTER 1.

HARBOR OR PORT COMMISSIONS; POWERS OF POLITICAL SUBDIVISION; PILOTAGE

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§ 59-1-1. Creation of port commission; composition and jurisdiction of commission generally.

Any city in the State of Mississippi having a seaport or harbor therein designated as a port of entry by the United States government shall have a harbor commission, to be known as a port commission, and same shall be composed of five resident citizens of such city, who shall be qualified electors therein, three of whom shall be skilled and experienced in maritime affairs. Said commission shall have jurisdiction over the port and terminals and harbor and passes leading thereto, and all vessels, boats and wharves, common carriers and public utilities therein, using the same, within their respective cities. In the cities of Natchez, Vicksburg and Greenville, the mayor and board of commissioners, or mayor and board of aldermen of such cities shall be the port commissioners of their respective harbors.

HISTORY: Codes, 1930, § 4849; 1942, § 7546.

Cross References — Bridge and park commissions, see §§ 55-7-1 et seq.
Establishment and maintenance of foreign trade zones, see §§ 59-3-31 to 59-3-37.
The State Ports and Harbors Law, see §§ 59-5-1 et seq.
Taxation for port fund, see §§ 59-7-1 et seq.
Issuance of revenue bonds for port or harbor improvements, see §§ 59-7-501 et seq.
County development commissions, see §§ 59-9-1 et seq.
County port and harbor commissions, see § 59-11-1.

JUDICIAL DECISIONS

1. In general.

In view of the powers and duties vested in the port commissioners with respect to control over port and harbor facilities, it could not be said that a municipality owned warehouses, constructed by it, in a proprietary capacity rather than a public and governmental capacity, so as to preclude a suit by the state tax collector on behalf of the municipality to collect charges due on a contract for rental of such municipal warehouses. Gully v. Williams Bros., Inc., 182 Miss. 119, 180 So. 400, 1938 Miss. LEXIS 150 (Miss. 1938).

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 79-81.

CJS.
65 C.J.S., Navigable Waters § 36.

Practice References.
USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-1-3. Appointment, oath, bond, and terms of office of members of commission.

The port commission provided for in Section 59-1-1 shall be appointed as follows: one (1) shall be appointed by the Governor who shall be skilled and experienced in maritime affairs; one (1) shall be appointed by the board of supervisors of the county in which such port of entry is located, who shall be skilled and experienced in maritime affairs, and three (3) shall be appointed by the mayor and board of aldermen or mayor and board of commissioners of the city where such port of entry is located, one (1) of whom shall be skilled and experienced in maritime affairs. Before entering upon the duties of the office, each of said commissioners shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi, and shall give bond to be approved by the clerk of the city in which the port of entry is located, in a sum not less than Fifty Thousand Dollars ($50,000.00), conditioned upon the faithful performance of their duties. Said bond shall be made payable to the city in which the port of entry is located, and in case of breach thereof, suit may be brought on the relation of the city for the benefit of said commission. The commissioners shall hold office for a term of four (4) years from the day of their appointment and qualification, and until their successor or successors shall be appointed and qualify as set out herein.

HISTORY: Codes, 1930, § 4850; 1942, § 7547; Laws, 2009, ch. 467, § 21, eff from and after July 1, 2009.

Cross References — Prohibition against interest in public contracts, see Miss. Const. Art. 4, § 109.

Who may administer oaths, see §§ 11-1-1, 25-1-9.

Appointment of port commissioners, see §§ 59-7-125, 59-7-407.

Appointment of county port authority or development commission members, see § 59-9-9.

Appointment of county port and harbor commissioners, see § 59-11-3.

§ 59-1-5. Compensation of members of commission.

Each member of any port commission created under the provisions of this chapter, operating in a county bounded by the Gulf of Mexico shall receive as compensation twenty-two dollars and fifty cents ($22.50) per day while engaged in attendance upon meetings of the commission, or engaged in other duties of the commission, not to exceed sixty (60) days in any one (1) year, and shall receive their actual traveling expenses, to be audited and allowed by the commission.

HISTORY: Codes, 1942, § 7557; Laws, 1936, 2nd Ex. Sess. ch. 25; Laws, 1973, ch. 344, § 1, eff from and after passage (approved March 21, 1973).

Cross References — Salary of port director, see §§ 59-1-27, 59-7-129.

§ 59-1-7. Meetings; officers.

When the port commissioners shall have been appointed and shall be qualified as set out in this chapter, they shall meet at the regular place for the meetings of the mayor and board of aldermen, or mayor and board of commissioners, of the municipality, after giving at least ten days notice of the time and place of such meeting by publication in a newspaper published in such city, and they shall elect a president and secretary, who shall be members of the commission.

HISTORY: Codes, 1930, § 4851; 1942, § 7548.

Cross References — Meeting of port commissioners, see §§ 59-7-127, 59-7-409.
Meetings of county development commission, see § 59-9-11.

§ 59-1-9. General powers and duties of commission; commission may enter into joint venture for construction and operation of facilities under jurisdiction of commission.

It shall be the duty of the commission to keep a minute book in which shall be recorded all of their acts, orders, rules and regulations. It shall be the duty of said commission to adopt rules and regulations not inconsistent with law to govern their official acts. The commissioners are hereby empowered and authorized to act as port wardens and pilot commissioners, and to perform any and all duties pertaining to such within their respective municipalities. It shall be the duty of the commission to make and publish all needful rules and regulations to govern the harbor, docks and passes within their respective jurisdictions, and to fix and prescribe tariffs, fees, fines, penalties and forfeitures for the violations of the rules and regulations of said commission, and said commission shall have the power to fix and determine all port and terminal charges, and they may enforce the collection thereof through any court of competent jurisdiction in this state. This section shall not apply to public utilities nor to railroad terminal charges covered by or carried in approved tariffs authorized by the Interstate Commerce Commission nor to lawful railroad operation and activities.

It shall be the duty of the port commissioners within their respective jurisdictions to see that all port positions, such as harbormaster, pilots, boatmen, stevedores, surveyors, watchmen, police, ship chandlers, ship agents and such other persons performing services for the public shipping, carry out their duties in a manner that is not detrimental to the port and shall not be unduly burdensome to the public shipping.

It shall be the duty of the commissioners to appoint annually a sufficient number of pilots, and all agents and factors necessary for the protection of the harbor and the advancement of public shipping, except that pilots shall be appointed for a term of four (4) years, and before any person shall be appointed a pilot, harbormaster, boatman, stevedore, surveyor, watchman, police, ship chandler or ship agent, his qualifications for the same shall be passed upon by said port commissioners. After satisfying themselves that any applicant for the position of pilot, harbormaster, boatman, stevedore, surveyor, watchman, police, ship chandler or ship agent is competent and well qualified to perform the duties of such position and his services are required for the protection of the harbor and the advancement of public shipping, the port commissioners shall issue a license to such applicant, provided and upon condition that such applicant shall enter into a good and sufficient bond in an amount in each case to be determined by the commissioners, the bond to be entered into not to exceed the sum of Five Thousand Dollars ($5,000.00), said bond to be payable to the city of the port of entry, conditioned according to law for the faithful performance of his duties, and in case of breach thereof, suit may be brought thereon in the name of the city for the benefit of said port commissioners. The port commissioners shall have the right to revoke any such license for neglect of duty, incompetency, inefficiency, physical disability or for any act or acts detrimental to the interests of the port. Additional pilots may be examined and licensed when in the opinion of said port commissioners the services of same are required for the protection of the harbor and the advancement of public shipping.

In addition to the general powers and duties of a port commission, a port commission may enter into joint ventures or community alliances with private entities or other port commissions or development commissions to construct and operate any facilities under the jurisdiction of such commissions.

HISTORY: Codes, 1930, § 4852; 1942, § 7549; Laws, 1984, ch. 493, § 1; Laws, 2001, ch. 327, § 2, eff from and after July 1, 2001.

Cross References — Duties of port commission, see §§ 59-7-129, 59-7-131.

Stevedore's license, see § 59-1-39.

Requirement for compulsory pilotage, see § 59-1-41.

Penalty for performing harbor services without being duly licensed, see § 59-1-43.

Supplemental duties of port commission where certain federal projects are involved, see § 59-7-205.

Collection of fees, etc., see § 59-7-307.

Criminal offense of forgery or counterfeiting of licenses, see § 97-21-35.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Ownership of facilities.

1. In general.

The rule-making power conferred by this section [Code 1942, § 7549] extends to the establishment of methods of calling special meetings. Simpson v. Gulfport, 239 Miss. 136, 121 So. 2d 409, 1960 Miss. LEXIS 275 (Miss. 1960).

2. Ownership of facilities.

In view of the powers and duties vested in the port commissioners with respect to control over port and harbor facilities, it could not be said that a municipality owned warehouses, constructed by it, in a proprietary capacity rather than a public and governmental capacity, so as to preclude a suit by the state tax collector on behalf of the municipality to collect charges due on a contract for rental of such municipal warehouses. Gully v. Williams Bros., Inc., 182 Miss. 119, 180 So. 400, 1938 Miss. LEXIS 150 (Miss. 1938).

OPINIONS OF THE ATTORNEY GENERAL

Port Commission may not pay Rotary Club dues of Port Director; Section 59-1-9 and 59-1-11 of Mississippi Code, describing powers of Port Commission, do not authorize Port Commission to make such payment on behalf of Port. Tindall Aug. 25, 1993, A.G. Op. #93-0551.

RESEARCH REFERENCES

Am. Jur.

70 Am. Jur. 2d, Shipping §§ 79-81, 234 et seq.

CJS.

65 C.J.S., Navigable Waters §§ 42, 43.

§ 59-1-11. Additional powers of port commission.

In addition to the power and authority conferred in Section 59-1-1, the port commission and mayor and board of commissioners of the port of entry, acting jointly only, may in their discretion negotiate a contract or contracts for any and all repairs or any part thereof affecting the reconstruction, repair or maintenance of any pier, dock, warehouse, grain elevator, bulk loading plant, sheds or any other property at the port of entry under the jurisdiction of said port commission and city, under terms and conditions as both bodies may deem best and economical to the city wherein the port of entry is located.

The port commission is given full power and authority to employ engineers, attorneys and other professional and technical help in or about the operation, development and advancement of said port, and to pay reasonable compensation therefor. Such employment and compensation therefor to be approved by the mayor and board of commissioners of the port of entry.

HISTORY: Codes, 1942, § 7549.5; Laws, 1948, ch. 391.

Cross References — Supplementary and additional powers in connection with flood control projects, see § 59-7-205.

Repair contracts let by county port commissioners, see § 59-9-25.

OPINIONS OF THE ATTORNEY GENERAL

Port Commission may not pay Rotary Club dues of Port Director; Section 59-1-9 and 59-1-11 of Mississippi Code, describing powers of Port Commission, do not authorize Port Commission to make such payment on behalf of Port. Tindall Aug. 25, 1993, A.G. Op. #93-0551.

§ 59-1-13. Construction of Sections 59-1-13 through 59-1-25 generally.

Being for the purpose of relieving unemployment and promoting industrial development and the development of fisheries, commerce and shipping in the state, Sections 59-1-13 through 59-1-25 shall be construed as granting additional authority to the several port commissions of the State of Mississippi, and the same shall not repeal or impair any existing law.

HISTORY: Codes, 1942, § 7549.7-08; Laws, 1950, ch. 450, § 8.

§ 59-1-15. Definition of "industrial operations."

The term "industrial operations" as used in Sections 59-1-13 through 59-1-25 shall include but not be limited to any and all enterprises the operation of which will aid in the development of fisheries, commerce, navigation or shipping in the port, as well as all forms of manufacturing enterprises.

HISTORY: Codes, 1942, § 7549.7-04; Laws, 1950, ch. 450, § 4.

§ 59-1-17. Jurisdiction of commission; reclamation, use and disposition of lands subject to commission jurisdiction generally; leasing and subleasing of certain submerged lands and tidelands owned by state.

(1) The several port commissions in the State of Mississippi are each hereby vested with full jurisdiction and control of any and all lands lying within, or adjacent to, any river, bay or natural lake which are now, or heretofore were, below the mean high tide mark, and which lands lie within or adjacent to any port or harbor within the jurisdiction of such port commission, and as to which lands the claims of private persons or private corporations have been, or hereinafter are, acquired by such port commission, or by the city for its benefit, by purchase, lease, conveyance or eminent domain proceedings. Any such port commission is hereby authorized to reclaim any and all such lands, by filling, dredging or other methods and to utilize, lease or dispose of same for the development and operation of the port to the same extent it is now, or may hereinafter be, authorized to utilize its other facilities.

(2) It is hereby declared that the leasing or use for commercial purposes, port purposes and for industrial development related thereto of the following described submerged lands and tidelands belonging to the State of Mississippi in an area lying between the East Pascagoula River and the West Pascagoula

River, Jackson County, Mississippi, will serve a higher public interest in accordance with the purposes of this section and with the public policy of this state as set forth in Section 49-27-3, said property being more particularly described as follows:

All that part of the Lowry Island Resurvey, which is bounded on the South by the L&N (now CSX) Railroad Track; on the East by the East Pascagoula River; on the West by the West Pascagoula River; and on the North by the North corporate limits of the City of Pascagoula and the South corporate limits of the City of Moss Point, LESS AND EXCEPT, however, that part of said property now owned by any private corporations.

(3) The governing authority of the city in which such state lands are located is hereby authorized to apply for and secure a lease in accordance with Section 29-1-107, except for a period of not to exceed forty (40) years, of such state lands as may be necessary for the development for commercial purposes, port purposes and related industrial facilities in the aforesaid areas described in subsection (2) hereof.

Application for a lease shall be made with the Secretary of State.

Utilization of any and all submerged land and/or tideland shall be in such a manner so as not to obstruct normal navigation of any normal and natural channel. Title to the property shall remain vested in the State of Mississippi.

All oil, gas and other minerals in, on or under said lands leased are hereby specifically reserved unto the State of Mississippi.

The city governing authority is hereby authorized to sublease such lands for commercial purposes, port purposes and for industrial development related thereto.

All subleases executed by the city governing authority shall be on such terms and conditions, and with such safeguards, as will best promote and protect the public interest. Such subleases shall be submitted to the Secretary of State for approval. Each sublease shall provide that if such property is not utilized within five (5) years, or if commercial, port or industrial usage ceases and such termination continues for a period of two (2) years, the sublease shall terminate and all rights thereunder shall revert to the city. If such nonutilization for a period of five (5) years or cessation of use for a period of two (2) years shall be caused, suspended, delayed or interrupted by act of God, fire, war, rebellion, scarcity of water, insurrection, riot, strike, scarcity of labor, differences with employees, failure of a carrier to transport or furnish facilities for transportation; or as a result of some order, rule or regulation of any federal, state, municipality or other governmental agency; or as the result of failure of the sublessee to obtain any required permit or certificate; or as the result of any cause whatsoever beyond the control of sublessee, the time of such delay or interruption shall not be counted against the sublessee in determining such period of five (5) years or two (2) years. All subleases shall be for a fair and adequate consideration and the compensation and revenues therefrom shall be retained by the state.

(4)(a) It is further declared that it will serve a higher public interest in accordance with the purposes of this section and with the public policy of the state as set forth in Section 49-27-3 for the following parcels of the Lowry Island Resurvey to be subleased for the purpose of developing multiunit residential structures, height not exceeding fifty (50) feet, that are an integral part of a public marina: (i) that parcel consisting of existing filled tidelands or fastlands lying immediately adjacent to the East Pascagoula River and north right-of-way boundary of U.S. Highway 90; and (ii) that parcel consisting of existing filled tidelands or fastlands lying immediately adjacent to the West Pascagoula River and north right-of-way boundary of U.S. Highway 90.

(b) The governing authority of the city in which are located the parcels described in this subsection may sublease such parcels for such residential development upon the same terms and conditions prescribed in subsection (3).

(5) This section is to be considered as supplementary and cumulative and nothing in this section shall be construed as repealing or amending any options, leases, deeds, contracts, agreements or legal instruments heretofore entered into by the governing authorities of the municipality in which the port of entry is located, or the port commission.

HISTORY: Codes, 1942, § 7549.7-01; Laws, 1950, ch. 450, § 1; Laws, 1988, ch. 336; Laws, 2008, ch. 460, § 1, eff from and after July 1, 2008.

§ 59-1-19. Sale, lease or other disposition of land not used for port purposes.

In the event any part of lands as are described in Section 59-1-17 are not used for port purposes, and navigation and commerce will not be impeded thereby, such port commission may sell, lease or otherwise dispose of same to individuals, firms or corporations, public or private, for industrial use, on such terms and conditions and with such safeguard as will best promote and protect the public interest, and they are hereby authorized to transfer title or possession to any part or all of such lands by special warranty deed, lease, contract, or other customary business instrument; however, no such lease shall be executed for a term in excess of ninety-nine years from its date, and before execution of same any such conveyance, lease, contract or other disposition shall be authorized by the affirmative vote of at least two-thirds of the membership of such port commission by order or resolution entered on its minutes, which order or resolution shall set forth the substantial terms of such conveyance, lease, contract, or other disposition. In the event title to any such land under the jurisdiction of the port commission is in the name of the city, no such transaction shall be consummated until and unless the same be authorized by proper resolution of the port commission and of the city, in which event the city shall join the port commission in the execution of any such instrument.

HISTORY: Codes, 1942, § 7549.7-02; Laws, 1950, ch. 450, § 2.

Cross References — Lease of mineral lands other than sixteenth section or lieu lands, see §§ 17-9-1 et seq.

Public lands generally, see §§ 29-1-1 et seq.
Lease of surface and submerged lands generally, see § 29-1-107.
Mineral leases of state lands generally, see §§ 29-7-1 et seq.

RESEARCH REFERENCES

Am. Jur.
78 Am. Jur. 2d, Waters §§ 306, 308.

§ 59-1-21. Terms and conditions of conveyances, contracts, leases, etc.

Any such conveyance, contract, lease or other disposition authorized by Section 59-1-19 of any or all such lands described in Section 59-1-17 may be made upon such terms and conditions and for such consideration as may be found to be adequate by the port commission, and approved by the city, in orders or resolutions authorizing same, and the covenants and obligations of the lessee or grantee to make expenditures in determined amounts, and within such time or times, for improvements to be erected on the land, by such lessee or grantee, and to conduct thereon industrial operations in such aggregate payroll amounts and for such period of time or times as may be determined and defined in such lease, deed or other disposition, shall constitute and be deemed sufficient consideration for the execution of any such conveyance, lease, contract or other disposition. Any such instrument shall, however, contain reasonable provisions for the termination of the lease or revision of title to the land, but, unless otherwise agreed to, not the improvements of grantee or lessee, in the event of default on the part of the lessee or grantee of his or its obligations or covenants under any such agreement.

HISTORY: Codes, 1942, § 7549.7-03; Laws, 1950, ch. 450, § 3.

§ 59-1-23. Assistance of municipalities in establishing industries.

In lieu of exercising the authority herein granted, a port commission may cooperate and assist any authorized municipality, as defined in Sections 57-1-1 through 57-1-51, Mississippi Code of 1972, to which a certificate of public convenience and necessity has been issued under such sections, in the establishment of an industry or industries by such municipality, and may for such purpose or purposes, convey or lease any or all such lands to any such municipality, or join such municipality in the execution of a contract, lease, conveyance or other disposition for the operation of the industry, but any such disposition shall be subject to termination or revision of title in the event of abandonment of the industry, non-compliance with its terms, or non-user for the purposes for which same is made.

HISTORY: Codes, 1942, § 7549.7-05; Laws, 1950, ch. 450, § 5.

Cross References — Municipal industrial enterprises generally, see §§ 57-1-1 et seq.
Industrial parks and districts generally, see §§ 57-5-1 et seq.

§ 59-1-25. Reservation of oil, gas and minerals in sale, lease or other disposition of lands.

Any sale, lease or other disposition made under Sections 59-1-13 through 59-1-25 shall except all oil, gas and other minerals, except sand, clay and gravel on, in and under the land, and shall reserve to the owner thereof the right to develop and produce same in such manner as will not injure or endanger the improvements of the lessee or grantee placed on the land after the execution of such lease, conveyance or other disposition.

HISTORY: Codes, 1942, § 7549.7-06; Laws, 1950, ch. 450, § 6.

Cross References — Lease of state lands for minerals generally, see § 29-7-3.

§ 59-1-27. Port director.

The port commission is hereby authorized, in its discretion, to employ a port director. It shall be the duty of said port director to solicit business for the port, investigate railroad and ocean rates for the protection of the general public in using said port. The salary of the port director shall be fixed by the commissioners with the approval of the mayor and board of aldermen, or the mayor and board of commissioners, and shall be paid from funds derived under the provisions of this chapter, or from the general funds or special funds raised for such purpose in the city treasury; such port commission may, in its discretion, select from its membership a competent person to serve in the capacity of port director, in which case the salary paid such member for services rendered as port director shall not be subject to the restrictions fixed in Section 59-1-5.

HISTORY: Codes, 1930, § 4853; 1942, § 7550; Laws, 1940, ch. 314.

Cross References — Compensation of port commissioners, see § 59-1-5.
Salary of county port director, see § 59-7-129.

§ 59-1-29. Appropriation of funds for use of port commission by municipal authorities.

The mayor and board of aldermen or the mayor and board of commissioners of a municipality having a port of entry as herein defined are hereby authorized and empowered in their discretion to appropriate money for the use and benefit of the port commission to be expended under the direction of the port commission with the approval of said municipal authorities.

HISTORY: Codes, 1930, § 4856; 1942, § 7553.

Cross References — Purposes for which bonds may be issued by municipality, see § 21-33-301.

Powers of municipalities over harbors and wharves, see § 21-37-15.
Ports of entry generally, see §§ 59-3-1 et seq.
Small craft harbors, see §§ 59-15-1 et seq.

§ 59-1-31. Appropriation of funds for use of port commission by county governing authorities.

The board of supervisors of a county having a port of entry as herein defined is hereby authorized and empowered in its discretion to appropriate money for the use and benefit of the port to be expended under the direction of the port commissioners with the approval of said board of supervisors.

HISTORY: Codes, 1930, § 4857; 1942, § 7554.

Cross References — Powers of boards of supervisors generally, see § 19-3-41.
County port authorities or development commissions, see §§ 59-9-1 et seq.

§ 59-1-33. County membership in rivers and harbors association.

The board of supervisors of the various counties are hereby authorized, in their discretion, to join on behalf of their respective counties the rivers and harbors association of Mississippi, and to pay from the general fund of the county membership dues of the association. The payment of membership dues shall entitle the county to all of the rights and privileges of membership and the county shall not be liable for any additional dues or assessments. After a county has joined the association, it may terminate its membership by formal resolution or failure to pay membership dues.

HISTORY: Codes, 1942, § 7557.5; Laws, 1959, Ex. Sess. ch. 37.

§ 59-1-35. Affiliation with rivers and harbors association by cities and other political subdivisions or agencies.

All city, county, district and state ports, harbors and waterway systems and any other agency, department or political subdivision, including municipalities and boards of supervisors, may, in their discretion, become affiliated with, support and pay dues to the rivers and harbors association of Mississippi.

HISTORY: Codes, 1942, § 7557.6; Laws, 1970, ch. 411, § 1, eff from and after passage (approved March 26, 1970).

§ 59-1-37. Acquisition of land for industrial purposes or port and terminal facilities by certain cities and counties.

(1) Any city or cities situated in any county bordering on the Mississippi River and/or any such county, acting alone or jointly with any said city or cities, is and/or are hereby authorized and empowered, acting through its or their governing authorities, to acquire by purchase or otherwise, and to sell, lease or

otherwise dispose of land situated in such county, either within or outside the corporate limits of such city or cities, for industrial purposes, or for river port and port facilities, for terminal and terminal facilities, and for landing and landing facilities, for storage and transportation of freight and passengers on the waters of the Mississippi River.

(2) For the purposes aforesaid, the said city or cities and/or county, acting alone or jointly, is and/or are authorized and empowered to borrow money and issue bonds, certificates of indebtedness, or notes as security therefor, in such form and amounts, and bearing such interest, not to exceed six per cent (6%) per annum, and maturities as may be determined by the governing authorities thereof, and to levy ad valorem taxes for payment of the principal and interest thereon.

(3) The said city or cities and/or county may pay for any property purchased under authority of this section from the general funds of the city or cities and/or county and/or the proceeds from the sale of any bonds, certificates of indebtedness, or notes issued for such purposes by the city, cities or county.

(4) The bonds, certificates of indebtedness, or notes provided for herein may be issued under and in the same manner, notice and conditions as is provided by any law authorizing said city or cities or county to issue the general full faith and credit bonds, or other evidences of indebtedness of said city or cities or county, and shall not be included in any limitation now imposed by law but may be in addition thereto.

(5) The land which may be purchased under authority hereof by any said city or cities, whether acting alone or jointly with said county, and situated outside of the corporate limits of said city or cities shall be located not more than seven miles from the line of the corporate limits of the city nearest thereto.

(6) Said city or cities or county, through its or their governing authorities, is and/or are hereby authorized and empowered to do and perform all acts and things necessary for the purposes hereof.

(7) This section shall be considered and is an alternative plan and authority supplemental to and in addition to any other law in effect dealing with and pertaining to the subject matter and provisions hereof, and shall not amend or repeal any existing law, but as aforesaid shall be and is an alternative plan and authority applicable to any city or cities within the class as herein provided for.

HISTORY: Codes, 1942, § 7557.8; Laws, 1964, ch. 500, §§ 1-8; Laws, 1964, ch. 282, §§ 1-7, eff from and after passage (approved April 23, 1964).

Cross References — Municipal bonds, see §§ 21-33-301 et seq.
Municipal industrial enterprises generally, see §§ 57-1-1 et seq.
Industrial parks established in certain municipalities, see § 57-5-17.
Landings, see §§ 59-19-1 et seq.

§ 59-1-39. Licensing of harbor masters, pilots, stevedores, etc.

Contracting stevedores shall pay a privilege license not to exceed five hundred dollars ($500.00) per year, the amount within this limit, to be fixed and determined by the port commissioners, and the same shall be paid to the port commission or port authority to be used for port expenses and maintenance as directed by the port commissioner or port authority. Harbor masters, pilots, boatmen, stevedores, surveyors, watchmen, police, ship agents, ship chandlers and such other persons performing services for the public shipping as the port commissioners may require, shall pay annually such license or permit fee as may be prescribed and required by the port commissioners not to exceed fifty dollars ($50.00). The fees for piloting, inward and outward, shall be so fixed as not to be unduly burdensome on shipping. The piloting fees for boarding vessels on arrival, for docking and for each shift or move thereafter shall be determined and fixed by the port commissioners as may from time to time be considered reasonable and proper under existing conditions.

It shall be unlawful for any person or persons, to act as harbor master, pilot, boatman, stevedore, surveyor, watchman, ship agent, ship chandler or in any other capacity as the port commissioners may designate, without first being duly licensed and qualified as set out in this section, or without having been issued a permit that such service is necessary for the protection of the harbor or advancement of public shipping.

It shall be unlawful for any vessel, firm or corporation to employ a harbor master, pilot, boatman, stevedore, surveyor, watchman, police, ship agent, ship chandler or any other such person until such person shall have been first duly licensed and qualified as provided in this section.

HISTORY: Codes, 1930, § 4854; 1942, § 7551; Laws, 1948, ch. 381, § 1; Laws, 1968, ch. 579, § 1; Laws, 1984, ch. 493, § 2, eff from and after passage (approved May 15, 1984).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph. The word "on" was changed to "or" so that "to act as . . . ship agent, ship chandler on in any other capacity" now reads as "to act as . . . ship agent, ship chandler or in any other capacity." The Joint Committee ratified the correction at its May 16, 2002, meeting.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping § 95.

§ 59-1-41. Compulsory pilotage.

It shall be unlawful for any vessel of over 250 tons net registered tonnage to enter the harbors or passes leading thereto without being piloted and under the direction of a licensed pilot, and all vessels shall be subject to compulsory pilotage except American vessels laden with coast-wise cargo not destined for foreign ports.

HISTORY: Codes, 1930, § 4858; 1942, § 7555.

Cross References — Liability of licensed pilots, see § 59-1-42.

OPINIONS OF THE ATTORNEY GENERAL

Compulsory pilotage requirement applies to all vessels over 250 tons net registered tonnage entering Gulfport Ship Channel and not just to those entering vessels destined for Port at Gulfport. Stone, Feb. 8, 1990, A.G. Op. #90-0064.

Because Legislature has authorized each of port commissions on coast to license their own pilots, it did not intend for pilots from one port (i.e., Gulfport) to have monopoly on pilotage; Authority may only compel vessels bound for Gulfport to take on one of its pilots. Stone, Feb. 8, 1990, A.G. Op. #90-0064.

Port of destination or origination has authority to require that pilot be on board if vessel is bound for another port other than Gulfport, i.e., Biloxi, Pascagoula, etc. Stone, Feb. 8, 1990, A.G. Op. #90-0064.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 99 et seq.

§ 59-1-42. Licensed pilot liability.

(1) A licensed pilot or pilot trainee providing pilot services pursuant to Section 59-1-41 shall not be liable for more than Five Thousand Dollars ($5,000.00) for damage or loss caused by the licensed pilot's or pilot trainee's error, omission, fault, or neglect in the performance of the pilot services, except for the following:

(a) Damage or loss that arises because of the willful misconduct or reckless disregard for safety by the licensed pilot or pilot trainee; or

(b) An act or omission relating to the ownership and operation of a pilot boat unless the pilot boat is directly involved in pilot services other than the transportation of licensed pilots.

(2) This section does not exempt a vessel or its owner or operator from liability for damage or loss caused by the vessel to a person or property on the grounds that:

(a) The vessel was piloted by a licensed pilot or pilot trainee pursuant to Section 59-1-41; or

(b) The damage or loss was caused by the error, omission, fault, or neglect of a licensed pilot or pilot trainee.

(3) In a proceeding brought against a licensed pilot or pilot trainee providing pilot services pursuant to Section 59-1-41, for an act or omission for which liability is limited as provided by this section and in which other claims are made or anticipated with respect to the same act or omission, the court shall dismiss the proceedings as to the licensed pilot or pilot trainee.

(4) Liability under this section shall also be limited as follows:

(a) A pilot or pilot trainee is not liable directly or as a member of an organization of pilots for any claim that:

(i) Arises from an act or omission of another pilot or pilot trainee or organization of pilots; and

(ii) Relates directly or indirectly to pilot services.

(b) An organization of pilots shall not be liable for any damages caused by a licensed pilot's or pilot trainee's error, omission, fault or neglect in the performance of pilotage services.

(5) For the sole purpose of occasions when this section is applicable as a defense to liability by a licensed pilot or pilot trainee, the licensed pilot or pilot trainee providing pilot services pursuant to Section 59-1-41; asserting the defense shall be considered to have been acting as the servant of the vessel, its owner and its operator.

(6) This section does not apply to a vessel operator, captain, master or pilot that is:

(a) Not required pursuant to Section 59-1-41;

(b) Operating solely under a federal piloting license or;

(c) Operating an American vessel laden with coast-wise cargo not destined for a foreign port.

(7) This section shall apply to all causes of action that occur on or after July 1, 2013.

HISTORY: Laws, 2013, ch. 328, § 2, eff from and after July 1, 2013.

Editor's Notes — Laws of 2013, ch. 328, § 1 provides:

"SECTION 1. The purpose of this act is to stimulate and preserve maritime commerce on the pilotage grounds of the state by limiting and regulating the liability of certain pilots and to maintain pilotage fees at reasonable amounts as a component of this state's pilotage regulatory system, and is essential to the economic viability of maritime commerce and serves the public interest."

§ 59-1-43. Use of or actions by unlicensed persons.

Any person or persons, vessel, firm or corporation, acting as or employing a harbormaster, pilot, boatman, stevedore, surveyor, watchman, police, ship agent, ship chandler or such other persons as may be required by the port commissioners, performing services for the public shipping, without first being duly licensed and qualified as provided in this chapter shall be guilty of a misdemeanor and, upon conviction, shall pay a fine of not exceeding one thousand dollars ($1,000.00) per day for each day while so acting, and serve not more than thirty (30) days in jail, or both in the discretion of the court; and it shall be unlawful and a misdemeanor for any person not licensed by the board of commissioners to interfere with the duties of the harbormaster, pilot, boatmen, stevedores or their employees, surveyors, watchmen, police, ship agents, ship chandlers or such other persons who have been duly licensed while performing services for the public shipping except in cases of distress; and any person or persons violating the provisions hereof in that regard, on conviction, in the city, county or state court, shall be fined not less than one hundred dollars ($100.00) or sentenced to thirty (30) days in jail, or both, and not more than one thousand dollars ($1,000.00) or six (6) months in jail, or both, for each offense at the discretion of the court trying the case.

HISTORY: Codes, 1930, § 4859; 1942, § 7556; Laws, 1984, ch. 493, § 3, eff from and after passage (approved May 15, 1984).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Penalties set forth in statute are exclusive remedies available for violation of compulsory pilotage requirement; provision does not provide Authority with private right of action against violators. Stone, Feb. 8, 1990, A.G. Op. #90-0064.

Since criminal penalties set forth in statute are exclusive remedies for violations of compulsory pilotage laws, only available means of putting these mechanisms into action is by signing affidavit. Stone, Feb. 8, 1990, A.G. Op. #90-0064.

§ 59-1-45. Disposition of fines and penalties.

The fines and penalties collected under this chapter shall be paid into the city treasury to be used by the mayor and board of commissioners or mayor and board of aldermen for the benefit of the port.

HISTORY: Codes, 1930, §§ 4855, 4859; Laws, 1942, §§ 7552, 7556.

CHAPTER 3.

PORTS OF ENTRY

In General. 59-3-1
Foreign Trade Zones. 59-3-31

IN GENERAL

Sec.
59-3-1. General municipal powers.
59-3-3. Issuance of bonds authorized.
59-3-5. Details of bonds; tax levy; supplemental powers and authorizations for bond issues.
59-3-7. Conduct of election on issuance of bonds.
59-3-9. Qualifications of electors; form and marking of ballots; issuance of bonds without elections.
59-3-11. Issuance of bonds; maturities, interest, and execution of bonds; payment of principal and interest.
59-3-13. Disposition of proceeds of bonds; penalty for diversion.

§ 59-3-1. General municipal powers.

The corporate authorities of any municipality in which there is situated, wholly or partially within its boundaries, a harbor that is a port of entry, shall have the following power and authority: to construct all needful improvements in such harbor, including the deepening of any part of said harbor, and/or extending, enlarging and adding to the same by dredging in any direction including inland; to acquire, construct, repair and improve public wharves and docks for said municipality, in connection with said harbor, and to operate the same under the port commissioners; to own, construct, lease and maintain sheds, warehouses, elevators, compresses, floating dry docks, graving docks, marine railways, tugboats, and other structures and facilities needful for the convenient use of the same in the aid of commerce, and other works of public improvement, including roadways necessary or useful for such port, harbor, and/or dock and wharf purposes, and to control and operate the same under the port commissioners; said sheds, warehouses, elevators, compresses and other works of public improvements, including roadways, to be situated either upon the municipal wharves and docks, and/or upon lands owned, purchased, reclaimed or leased by the municipality and situated within reasonable and practical proximity to such wharves, docks, harbor or port; to set aside or lease portions or all of the said lands, wharves, docks, sheds, warehouses, elevators, compresses, floating dry docks, graving docks, marine railways, tugboats, and other structures and facilities needful for convenient use of the same in the aid of commerce, or any of the said necessary or useful improvements, for special purposes, for a term not exceeding twenty-five years; and to lease same for industrial use for a term not exceeding ninety-nine years to individuals, firms or corporations, public or private, on such terms and conditions and with such safeguards as will best promote and protect the public interest. Any such industrial lease may be executed upon such terms and conditions and for such monetary rental or other consideration as may be found adequate and approved by the city in orders or resolutions authorizing the same. Any covenants and obligations of the lessee to make expenditures in determined amounts and within such time or times, for improvements to be erected on the land by such lessee and to conduct thereon industrial operations in such aggregate payroll amounts and for such period of time or times as may be determined and defined in such lease, and to give preference in employment where practicable to qualified residents of the port of entry and of the county in which said port is situated, shall, if included in said lease, constitute and be deemed sufficient consideration for the execution of any such lease in the absence of a monetary rental or other considerations; any such instrument may contain reasonable provisions giving the lessee the right to remove its or his improvements upon termination of the lease. Such corporate authority shall also have the power and authority to acquire by eminent domain proceedings, purchase, or otherwise, the land, property and rights that may be necessary or useful for the foregoing purposes, and for such purposes the municipality shall have the right to reclaim submerged lands.

HISTORY: Codes, 1942, § 7558; Laws, 1931, ch. 11; Laws, 1954, ch. 343; Laws, 1960, ch. 341.

Cross References — General powers of municipality, see §§ 21-17-1 et seq.

Municipal powers in relation to harbors and wharves generally, see § 21-37-15.

Authority to establish bridge and park commission for harbor development, see §§ 55-7-1 et seq.

Power of municipality to appropriate money for use of port commission generally, see § 59-1-29.

County port authority, see §§ 59-9-1 et seq.

County port and harbor commission, see §§ 59-11-1 et seq.

Municipal powers in relation to small craft harbors, see §§ 59-15-3, 59-15-5.

JUDICIAL DECISIONS

1. In general.

The City of Gulfport is authorized to construct a small craft commercial harbor and other improvements for the purpose of improving and enlarging the port of Gulfport and in extending its port facilities. Xidis v. Gulfport, 221 Miss. 79, 72 So. 2d 153, 1954 Miss. LEXIS 515 (Miss. 1954).

OPINIONS OF THE ATTORNEY GENERAL

City has authority to enter into a lease of harbor property for a term not exceeding twenty-five years, on such terms and conditions as best promote the public interest, and to consent to the execution by the lessee of a leasehold deed of trust in and/or a pledge of rights thereunder, upon a finding by the city governing authorities that such lease would be in aid of commerce. Artman, Nov. 25, 1997, A.G. Op. #97-0773.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 79-81.

§ 59-3-3. Issuance of bonds authorized.

The corporate authorities referred to in Section 59-3-1 are authorized to issue bonds or other obligations of the municipality for any or all of the purposes enumerated and authorized under Section 59-3-1. The conditions of the sale of said bonds shall be fixed by the said corporate authorities.

HISTORY: Codes, 1942, § 7559; Laws, 1931, ch. 11.

Cross References — Municipal bonds generally, see §§ 21-33-301 et seq.
Additional powers conferred in connection with issuance of bonds, see § 31-21-5.
Details of bonds, see § 59-3-5.
Supplemental powers and authorizations for issuance of bonds, see § 59-3-5.
Bond issues for municipal harbors, see §§ 59-7-9, 59-7-11, 59-7-309, 59-7-415.
Municipal bonds for small craft harbors, see §§ 59-15-5 et seq.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 72 et seq.

Practice References.
USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-3-5. Details of bonds; tax levy; supplemental powers and authorizations for bond issues.

All bonds authorized by Section 59-3-3 shall be lithographed or engraved, and printed in two (2) or more colors, to prevent counterfeiting, and shall be in sums not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) each, and shall be registered as issued, be numbered in a regular series from one (1) upward, be signed by the mayor and countersigned by the clerk, who shall impress the municipal seal upon each bond as it is issued. Every such bond shall specify on its face the purpose for which it was issued; and the total amount authorized to be issued, and each shall be made payable to bearer. The corporate authorities shall levy annually a special tax to be used exclusively in paying the interest on such bonds and the bonds maturing within one (1) year, and in providing a sinking fund for the redemption of the bonds issued.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

HISTORY: Codes, 1942, § 7560; Laws, 1931, ch. 11; Laws, 1983, ch. 494, § 27, eff from and after passage (approved April 11, 1983).

Cross References — Details of bonds issued for county harbors, see § 59-7-107.
Details of bonds issued for small craft harbors, see § 59-15-11.

§ 59-3-7. Conduct of election on issuance of bonds.

Before issuing bonds authorized by Section 59-3-3 the corporate authorities shall by resolution spread upon their minutes, declare their intention of issuing said bonds, fixing in such resolution the maximum amount thereof, and the purpose for which they are to be issued, and where an election is required shall fix in such resolution a date upon which an election shall be held in said municipality, of which not less than three weeks' notice shall be given by the clerk by a notice published in a newspaper published in said municipality once a week for three weeks preceding said election at three public places in said municipality. Such election shall be held, as far as practicable, as other elections are held in municipalities.

HISTORY: Codes, 1942, § 7561; Laws, 1931, ch. 11.

Cross References — Municipal bond elections generally, see §§ 21-33-307 et seq.
Details of issuance of bonds approved by election required by this section, see § 59-3-11.
Elections for county and municipal harbor bond issues, see § 59-7-17.
Elections on bond issues for small craft harbors, see § 59-15-7.

§ 59-3-9. Qualifications of electors; form and marking of ballots; issuance of bonds without elections.

At such election as is provided for by Section 59-3-7, all qualified electors may vote and the ballots used shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words, "For the bond issue," and the words, "Against the bond issue," and the voter shall vote by placing a cross (X) opposite his choice of the proposition. In cities of less than twelve thousand inhabitants, when the amount to be issued is not more than thirty thousand dollars the corporate authorities shall publish the resolution as herein provided declaring their intention to issue said bonds for three weeks, giving the day and date upon which said bonds are to be issued; and if twenty per cent of the qualified electors of the municipality file a written protest against the issuance of said bonds on or before said date, then an election shall be had as herein provided, and if no protest shall be filed said bonds shall be issued without an election.

HISTORY: Codes, 1942, § 7562; Laws, 1931, ch. 11.

Cross References — Details of bonds issued pursuant to the authority of this section, see § 59-3-11.

§ 59-3-11. Issuance of bonds; maturities, interest, and execution of bonds; payment of principal and interest.

Should the election provided for in Sections 59-3-7 and 59-3-9 result in favor of the proposed bond issue, by a majority of those voting in said election voting in favor of the issuance of said bonds, the corporate authorities may issue such bonds, either in whole or in part, within one (1) year after the date of such election or within one (1) year after final favorable determination of any litigation affecting such bonds as they may deem best, and should said bonds be issued by the municipality without an election therefor as provided in the preceding section, then said bonds may be issued as herein provided. All bonds shall mature annually, with all maturities not longer than twenty (20) years, with not less than one-fiftieth (1/50) of the total issue to mature each year during the first five (5) years of the life of said bonds, and not less than one-twenty-fifth (1/25) of the said total issue to mature annually during the succeeding ten-year period of the life of said bonds, and the remainder to be divided into approximately equal payments, one (1) payment to mature during each year for the remaining life of the bonds. Said bonds shall not bear a greater rate of interest than that allowed in Section 75-17-101, Mississippi Code of 1972, payable semiannually, the denomination, form and place of payment to be fixed in the ordinance of the corporate authorities issuing said bonds, and they shall be prepared and signed by the mayor and clerk of said municipality with the seal of the municipality affixed thereto, but the coupons may only bear a facsimile signature of such mayor and clerk. Such bonds, when issued, shall constitute a lien on all the taxable property in such municipality and the corporate authorities shall annually levy a special tax on all such property sufficient to pay the principal and interest on such bonds as the same falls due.

HISTORY: Codes, 1942, § 7563; Laws, 1931, ch. 11; Laws, 1981, ch. 462, § 14; Laws, 1982, ch. 434, § 27; Laws, 1983, ch. 541, § 34, eff from and after passage (approved April 25, 1983).

Cross References — Maturity and interest of municipal bonds generally, see § 21-33-315.

Additional powers conferred in connection with issuance of bonds, see § 31-21-5.

Details of bonds, see § 59-3-5.

Supplemental powers and authorizations for issuance of bonds, see § 59-3-5.

Bonds for municipal harbors, see § 59-7-417.

Bonds for small craft harbors, see § 59-15-11.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

§ 59-3-13. Disposition of proceeds of bonds; penalty for diversion.

The proceeds of any bonds issued under authority of Sections 59-3-1 through 59-3-13, shall be placed in the municipal treasury or depository, if there be one, as a special fund and shall be used for no other purpose than the purpose set forth in the original resolution of the corporate authorities of such municipality, and any officer diverting or assisting to divert any such funds to any other purpose than the purpose originally set forth in said resolution of the corporate authorities of such municipality shall be guilty of a misdemeanor and punishable accordingly, and shall be liable both personally and on his official bond for such diversion.

HISTORY: Codes, 1942, § 7564; Laws, 1931, ch. 11.

Cross References — Diversion of proceeds of municipal bonds generally, see § 21-33-317.

Diversion of proceeds of municipal bonds issued for harbor purposes, see § 59-7-419.

Diversion of proceeds of municipal bonds issued for small craft harbors, see § 59-15-13.

FOREIGN TRADE ZONES

Sec.	
59-3-31.	"Public corporation" defined.
59-3-33.	Establishment and operation by public corporation.
59-3-35.	Establishment and operation by private corporation.
59-3-37.	Operation and maintenance pursuant to terms of Act of Congress.

§ 59-3-31. "Public corporation" defined.

The term "public corporation," for the purposes of Sections 59-3-31 through 59-3-37, means the State of Mississippi or any political subdivision thereof or any public agency of this state or of any political subdivision thereof or any public board, bureau, commission or authority created by the legislature of the State of Mississippi.

HISTORY: Codes, 1942, § 7564-42; Laws, 1966, ch. 288, § 2, eff from and after passage (approved June 14, 1966).

RESEARCH REFERENCES

Practice References.
USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-3-33. Establishment and operation by public corporation.

Any public corporation of the State of Mississippi, as that term is defined in Section 59-3-31, is hereby authorized to make application for the privilege of establishing, operating and maintaining a foreign-trade zone in accordance with an Act of Congress approved June 18, 1934, entitled "An Act to provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes."

HISTORY: Codes, 1942, § 7564-41; Laws, 1966, ch. 288, § 1, eff from and after passage (approved June 14, 1966).

Federal Aspects— Foreign trade zones, see 19 USCS §§ 81a et seq.

§ 59-3-35. Establishment and operation by private corporation.

Any private corporation hereafter organized under the laws of this state for the purpose of establishing, operating and maintaining a foreign-trade zone in accordance with the Act of Congress referred to in Section 59-3-33, is likewise hereby authorized to make application for the privilege of establishing, operating and maintaining a foreign-trade zone in accordance with the said Act of Congress.

HISTORY: Codes, 1942, § 7564-43; Laws, 1966, ch. 288, § 3, eff from and after passage (approved June 14, 1966).

Federal Aspects— Foreign trade zones, see 19 USCS §§ 81a et seq.

§ 59-3-37. Operation and maintenance pursuant to terms of Act of Congress.

Any public or private corporation authorized by Sections 59-3-31 through 59-3-37 to make application for the privilege of establishing, operating and maintaining such foreign-trade zone, whose application is granted pursuant to the terms of the Act of Congress referred to in Section 59-3-33, is hereby authorized to establish such foreign-trade zone and to operate and maintain the same, subject to the conditions and restrictions of said Act of Congress, and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by said Act of Congress to carry out the provisions of said Act of Congress.

HISTORY: Codes, 1942, § 7564-44; Laws, 1966, ch. 288, § 4, eff from and after passage (approved June 14, 1966).

Federal Aspects— Foreign trade zones, see 19 USCS §§ 81a et seq.

CHAPTER 5.

STATE PORTS AND HARBORS

Sec.
59-5-1. Short title; definition of "board."
59-5-3. Declaration of public policy.
59-5-5. Construction of chapter.
59-5-7. Activities of board and state port authority pursuant to chapter as governmental functions.
59-5-9. Implementation of public policy by board; discretion of board; construction of rights, powers and duties of board.
59-5-11. General powers of board; lands subject to jurisdiction and control of board.
59-5-13. Acceptance of grants and contributions.
59-5-15. Analysis and survey by city, county or other agency of port or harbor proposed to be conveyed to state.
59-5-17. Negotiation of agreement with city, county or agency for state acquisition of port or harbor.
59-5-19. Approval of agreement for conveyance of port or harbor to state; terms and conditions of conveyance.
59-5-21. Operation by state port authority of ports or harbors acquired by or conveyed to state.
59-5-23. Authorization of contracts, etc., for improvement, operation, etc., of port or harbor.
59-5-25. Approval of agreement for improvement, operation, etc., of port or harbor; appropriation of excess funds or levy of tax.
59-5-27. Bond of members of port or harbor agency.
59-5-29. Increase in membership of county port authority upon issuance of bonds.
59-5-31. Additional powers and authority for certain port commissions and authorities; revenue bonds; tax exemptions.
59-5-33. State ports fund; joint activities or employment of personnel.
59-5-35. Setting aside or leasing of lands, docks, warehouses, etc.; exemption from certain ad valorem taxes.
59-5-37. Employment of personnel, execution of contracts, etc., for development, promotion, maintenance, etc., of ports, harbors, rivers, etc.; suits by and against state port authority; advertising and bidding requirements for contracts or purchases; use of design-build method of contracting [Subsection (3) repealed effective July 1, 2024].
59-5-39. Acquisition of rights of way, land, etc.
59-5-41. State bonds; issuance, terms, and conditions; interim financing of construction projects.
59-5-43. Negotiability of bonds; exemption from taxation.
59-5-45. Manner and price of sale of bonds; interest; maturity and redemption.
59-5-47. Disposition of proceeds of bonds.
59-5-49. Validation of bonds.
59-5-51. Payment of interest and principal on bonds; limitation on amount of bonds issued.
59-5-53. Withdrawals of bond proceeds from special fund.
59-5-55. Use of net revenues, rents, and earnings from state owned ports.
59-5-57. Payment of county's share of state ad valorem taxes for harbor purposes to state port authority.
59-5-59. Allocation of revenues, rents and earnings to payment of bonds; sinking fund.

Sec.

59-5-61. Refunding bonds.

59-5-63. Bonds as legal investments and securities for deposits of public funds.

59-5-65. Representation of State Bond Commission by Attorney General; payment of costs of sale, issuance and delivery of bonds.

59-5-67. Annual audit of state port authorities.

59-5-69. Annual budget of state port authorities.

§ 59-5-1. Short title; definition of "board."

This chapter may be cited as the "State Ports and Harbors Law."

As used in this chapter the word "board" shall mean the Mississippi Development Authority.

HISTORY: Codes, 1942, § 7564-01; Laws, 1958, ch. 365, § 1; Laws, 2012, ch. 485, § 4, eff from and after passage (approved Apr. 26, 2012).

Editor's Notes — Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Mississippi Development Authority".

Cross References — County and municipal harbors, see §§ 59-7-1 et seq.

Small craft harbors, see §§ 59-15-1 et seq.

State inland ports, see §§ 59-17-1 et seq.

RESEARCH REFERENCES

Am. Jur.

70 Am. Jur. 2d, Shipping §§ 79-81.

Practice References.

USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-5-3. Declaration of public policy.

It is hereby declared to be the public policy of the state to aid and encourage the promotion, development, improvement, and expansion of the state's ports, harbors and inland waterways.

HISTORY: Codes, 1942, § 7564-02; Laws, 1958, ch. 365, § 2, eff from and after passage (approved April 28, 1958).

§ 59-5-5. Construction of chapter.

(1) This chapter shall be construed liberally and broadly to effectuate the policy and purposes herein set out.

(2) This chapter shall be deemed to be full and complete authority for the exercise of the powers herein granted, but this chapter shall not be deemed to repeal or to be in derogation of any existing law of this state.

(3) The provisions of this chapter shall not be construed to repeal, amend, limit, or restrict statutes heretofore or hereinafter enacted, providing for the establishment, support, financing, and maintenance of port commissions, authorities, or other local agencies having jurisdiction over harbors, ports, rivers, channels, and waterways, nor to be applicable to any bond issue,

heretofore or hereafter issued for port or harbor purposes by any county or municipality in which said port is located and the provisions hereof shall be supplemental and cumulative and shall not repeal, limit or restrict the authority granted any public body or agency under any existing statute, except as herein otherwise expressly provided.

HISTORY: Codes, 1942, §§ 7564-03, 7564-26, 7564-29; Laws, 1958, ch. 365, §§ 3, 26, 29; Laws, 1960, ch. 342, § 4; Laws, 1967, Ex. Sess. ch. 7, § 7, eff from and after passage (approved June 29, 1967).

JUDICIAL DECISIONS

1. In general.

Lessees of state-owned port facilities were clothed with the same power of control and possessory rights as if they were the owner, and the general law of landlord and tenant gives a leasehold tenant the right to exclude entry to one whom he considers unsatisfactory, or detrimental to his business, or a hazard. Standard Fruit & S.S. Co. v. Putnam, 290 So. 2d 612, 1974 Miss. LEXIS 1709 (Miss. 1974).

§ 59-5-7. Activities of board and state port authority pursuant to chapter as governmental functions.

The carrying out of the corporate purposes of the board and the state port authority hereinafter created is in all respects for the benefit of the people of the State of Mississippi and is a public purpose, and the board and such state port authority will be performing an essential governmental function in the exercise of the powers conferred upon them by this chapter.

HISTORY: Codes, 1942, § 7564-24; Laws, 1958, ch. 365, § 24, eff from and after passage (approved April 28, 1958).

§ 59-5-9. Implementation of public policy by board; discretion of board; construction of rights, powers and duties of board.

There is hereby vested in the board the duty to implement such declared public policy as herein provided. Wide latitude and discretion shall be vested in the board in the exercise of its powers and duties, and the enumeration of specific rights, powers, and duties of said board, when followed by general powers, shall not be construed in the restrictive sense.

HISTORY: Codes, 1942, § 7564-03; Laws, 1958, ch. 365, § 3, eff from and after passage (approved April 28, 1958).

§ 59-5-11. General powers of board; lands subject to jurisdiction and control of board.

The board shall have power to acquire, purchase, install, lease, construct, own, hold, maintain, equip, use, control, and operate ports, harbors, waterways, channels, wharves, piers, docks, quays, elevators, tipples, compresses, bulk loading and unloading facilities, warehouses, floating dry docks, graving docks, marine railways, tugboats, ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, dredges and any other facilities required and incidental to the construction, outfitting, drydocking or repair of ships or vessels, and water, air and rail terminals, and roadways and approaches thereto, and other structures and facilities needful for the convenient use of the same in the aid of commerce, including the dredging, deepening, extending, widening, or enlarging of any ports, harbors, rivers, channels, and waterways, the damming of inland waterways, the establishment of water basins, the acquisition and development of industrial sites and the reclaiming of submerged lands. For such purposes the board is vested with full jurisdiction and control of any and all lands lying within, adjacent to, or near any state-owned or operated ports, harbors, rivers, channels, and waterways, or natural lakes, which lands are below the mean high tide mark, and which lands are not within the jurisdiction of any other public body.

HISTORY: Codes, 1942, § 7564-04; Laws, 1958, ch. 365, § 4; Laws, 1960, ch. 342, § 1; Laws, 1967, Ex. Sess. ch. 7, § 1; brought forward without change, Laws, 2008, ch. 544, § 3, eff from and after passage (approved May 9, 2008).

Cross References — Contracts with lessees for the construction of facilities such as those referred to in this section, and acquisition thereof by the board, see § 59-5-37.

County harbor and industrial site development, see §§ 59-9-65 et seq.

JUDICIAL DECISIONS

1. Judicial review.

In an action against the Port Authority for an alleged breach of lease, the scope of review of the Port Authority's actions was not limited and the Port Authority was not entitled to deference as the case did not pertain to a determinion of whether the Port Authority acted within its statutory authority and was, instead, a an action for breach of contract. Gulfside Casino Pshp. v. Mississippi State Port Auth., 757 So. 2d 250, 2000 Miss. LEXIS 74 (Miss. 2000).

§ 59-5-13. Acceptance of grants and contributions.

The board, in addition to the moneys which may be received by it from the sale of bonds and from the collection of revenues, rents, and earnings derived under the provisions of this chapter, shall have the authority to accept from any public or private agency, or from any individual, grants for or in aid of the construction of any planned development, or for the payment of bonds, and to receive and accept contributions from any source, of money or property or other things of value to be held, used and applied only for the purposes for which such grants or contributions may be made.

HISTORY: Codes, 1942, § 7564-25; Laws, 1958, ch. 365, § 25, eff from and after passage (approved April 28, 1958).

§ 59-5-15. Analysis and survey by city, county or other agency of port or harbor proposed to be conveyed to state.

Any city or county or other authorized port or harbor agency for which a port or harbor commission or authority has been heretofore or may be hereafter created, and which desires state ownership of such port or harbor, or any part thereof, is hereby authorized to employ competent engineers to prepare an analysis and survey of the assets, liabilities, and operation of such port or harbor, or any part thereof, proposed to be conveyed to the state, which survey shall include the reasonable market value of the land and/or facilities, the outstanding aggregate indebtedness, if any, the gross and net revenues accruing from such operation and such other information as may be required by the board, together with a plan for the improvement, operation, development, and expansion of such port or harbor, or such part thereof, which plan shall include the estimated cost of construction, the estimated cost of lands, properties, facilities, machinery, rights, easements, and franchises to be acquired, the estimated cost of engineering, architectural and legal expenses, and of financing charges and interest, and such other estimated expenses as may be necessary or incidental to such planned development, together with a projection of the gross and net revenues anticipated from the operation of the improved facilities, and any options, contracts, or commitments for the use of such improved facilities, and such other information as may be required by the board.

HISTORY: Codes, 1942, § 7564-05; Laws, 1958, ch. 365, § 5, eff from and after passage (approved April 28, 1958).

Cross References — County port authorities and development commissions, see §§ 59-9-1 et seq.

County port and harbor commissions, see §§ 59-11-1 et seq.

§ 59-5-17. Negotiation of agreement with city, county or agency for state acquisition of port or harbor.

On the receipt of an application from any city or county or other authorized port or harbor agency for state ownership of any port or harbor, or any part thereof, the board shall cause an independent determination and appraisal to be made of such analysis and survey, and the plan for the improvement, operation, development, and expansion of such port or harbor, or any part thereof, and if the board shall find and determine that the plan for the improvement, operation, development, or expansion of such port or harbor, or any part thereof, is practical and feasible and is in the public interest, and that such port or harbor, or any part thereof, can be operated economically under state ownership and that the revenues therefrom would be sufficient, over a period of time, to make such ownership and/or operation by the state self-liquidating, then the board in its discretion, may negotiate with such city and county or other authorized port or harbor agency on the terms of an agreement for the acquisition by the state of such port or harbor, or any part thereof. The board may modify the proposed plan for the improvement, operation, development, or expansion of such port or harbor or any part thereof, and may impose such terms and conditions as, in its discretion, it may require to protect the interest of the state, provided that if an entire port or harbor shall be conveyed to the state that all bonds theretofore issued and outstanding for the improvement of such port or harbor by any county or city, or both acting jointly, or other authorized port or harbor agency, shall be redeemed by the issuance of bonds as herein provided or assumed in conjunction with the plan for the development of such port or harbor.

HISTORY: Codes, 1942, § 7564-06; Laws, 1958, ch. 365, § 6, eff from and after passage (approved April 28, 1958).

§ 59-5-19. Approval of agreement for conveyance of port or harbor to state; terms and conditions of conveyance.

Any agreement as hereinabove provided for, reached between the board and the city or county, or other authorized port or harbor agency, shall be reduced to writing and shall set out the terms and conditions under which such port or harbor, or any part thereof, shall be conveyed to the state and shall specifically set out the minimum amount of bonds, if any, to be issued by the state for the improvement, operation, development, and expansion of such port or harbor, or any part thereof. When such agreement has been approved by the board, the city or county, or other authorized port or harbor agency, and the port commission, or port authority of the city or county, a conveyance of such port or harbor, or any part thereof, to the State of Mississippi, shall be executed by the city or county, or other authorized port or harbor agency, joined in by the port commission or port authority of the city or county, without monetary consideration. Such conveyance shall be in such form as may be prescribed by the board, but shall be conditioned on the issuance of bonds by the state in the minimum amount set out in such agreement for the improvement, operation, development or expansion of such port or harbor, or any part thereof. If such agreement shall provide that the entire port or harbor shall be conveyed to the state and shall be owned and operated by the state, then no such agreement shall become effective until approved by a majority of the qualified electors of the city or county having jurisdiction of such port or harbor voting in an election called for that purpose in the same manner as in other city or county special elections.

HISTORY: Codes, 1942, § 7564-06; Laws, 1958, ch. 365, § 6, eff from and after passage (approved April 28, 1958).

§ 59-5-21. Operation by state port authority of ports or harbors acquired by or conveyed to state.

Any port or harbor, or any part thereof, and all facilities, structures, lands or other improvements, acquired by or conveyed to the state, shall be operated by the board acting through a state port authority for such port or harbor, except as may be otherwise provided in this chapter. Such state port authority shall be an agency of the state and shall be vested, in addition to the rights, powers and duties conferred hereunder, with the same jurisdiction and the same rights, powers and duties vested by law in the port commission or port authority or other authorized port or harbor agency having jurisdiction of such port or harbor under statutes in effect on the date of the conveyance of such port or harbor, or any part thereof, to the state. Such state port authority shall consist of five (5) qualified electors of the city or county in which such port or harbor is located. The initial terms of the members of such port authority shall be staggered, one (1) member thereof, to be appointed by the governing authorities of the municipality in which such port or harbor is located or adjacent to, to serve for an initial term of one (1) year, one (1) member thereof, to be appointed by the board of supervisors of the county in which such port or harbor is located, to serve for an initial term of two (2) years, and three (3) members thereof, to be appointed by the Governor, to serve for initial terms of three (3), four (4) and five (5) years respectively, but all succeeding appointments shall be for terms of five (5) years. The members of the state port authority shall organize in the same manner authorized by law for the port commission or port authority formerly having jurisdiction over such port or harbor, or any part thereof. Members of the state port authority shall be entitled to compensation pursuant to Section 25-3-69 and travel expenses pursuant to Section 25-3-41. In its operation of such port or harbor, or any part thereof, such state port authority shall not be responsible to the city or county, or other authorized port or harbor agency, in which such port or harbor, or any part thereof, may be located, but shall be responsible solely to the board, and the board shall have the same rights and duties and the same relationship toward such state port authority as is vested by law in the county, city or other authorized port or harbor agency in its relation to the port commission or port authority formerly having jurisdiction of such port or harbor, or part thereof. Before entering upon the duties of the office, each of said members shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi, and shall file same with the secretary of state, and shall give bond in the sum of ten thousand dollars ($10,000.00), with a surety company or companies, authorized to do business in this state, conditioned according to law, and to be delivered to and approved by the treasurer of the State of Mississippi; the premiums on said bonds shall be paid from port funds.

HISTORY: Codes, 1942, § 7564-07; Laws, 1958, ch. 365, § 7; Laws, 1984, ch. 493, § 4, eff from and after passage (approved May 15, 1984).

Cross References — Powers of municipal port authorities, see § 59-3-1.

Powers and duties of county port commissions, see §§ 59-7-205, 59-7-209.

Authority of certain municipalities to operate port facilities, see §§ 59-7-305, 59-7-405.

Duties of municipal port commission, see § 59-7-411.

Powers and duties of county port authority or development commission, see § 59-9-15.

JUDICIAL DECISIONS

1. Venue.

Pursuant to the general venue statute, venue was proper in the First Judicial District of Harrison County because the Mississippi State Port Authority "resided" there; the Port Authority's offices, operations, employees, and commissioners were located in Harrison County, and thus, the Port Authority both "resided" and had its "principal place of business" in Harrison County. Miss. State Port Auth. at Gulfport v. S. Indus. Contrs. LLC, 271 So. 3d 742, 2018 Miss. App. LEXIS 653 (Miss. Ct. App. 2018).

§ 59-5-23. Authorization of contracts, etc., for improvement, operation, etc., of port or harbor.

Any city, county, or city and county acting jointly, or authorized port or harbor agency may enter into contracts, leases or agreements with the board upon such terms or conditions and for such purposes relating to the improvement, operation, development, and expansion of any port, harbor, or inland waterway, or any part thereof as they deem advisable and may agree upon, and, without limiting the generalities of the foregoing, authority is hereby granted to any city, county, or city and county acting jointly, or authorized port or harbor agency to prepare and submit to the board in the manner set out in Section 59-5-15, a plan for the improvement, operation, development or expansion of such port, harbor, waterway or any part thereof. The board shall cause an independent determination and appraisal to be made of such plan, and if the board shall find and determine that such plan is practical and feasible and is in the public interest, and that the revenues to be derived therefrom will, over a period of time, be sufficient to service and retire any bonds issued to complete such planned development, then the board, in its discretion, may negotiate with such city and county or other authorized port or harbor agency on the terms of a contract or agreement for the issuance of bonds necessary to complete such planned development. The board may modify the proposed plan for the improvement, operation, development, or expansion of such port, harbor, or waterway, or any part thereof, and may impose such terms and conditions as, in its discretion, it may require to protect the interest of the state.

HISTORY: Codes, 1942, § 7564-08; Laws, 1958, ch. 365, § 8; Laws, 1960, ch. 342, § 2; ch. 347.

§ 59-5-25. Approval of agreement for improvement, operation, etc., of port or harbor; appropriation of excess funds or levy of tax.

Any agreement reached between the board and the city or county, or city and county acting jointly, or authorized port or harbor agency shall be reduced to writing and set out the terms and conditions under which such planned development shall be completed, and shall specifically set out the maximum amount of bonds, if any, to be issued by the state for the completion of such planned development. No such agreement shall become effective until approved by a majority of the qualified electors of the city or county having jurisdiction of such port or harbor voting in an election called for that purpose in the same manner as in other city or county special elections. Any plan, agreement and contract which has been approved by the qualified electors of a county or municipality as herein provided, may be amended or supplemented to add additional projects thereto in the same manner as provided herein for the submission, modification and approval of the original plan, agreement and contract, save that instead of submitting such supplemental contract to the qualified electors of the county having jurisdiction of such port or harbor for approval, the governing body of the county or municipality shall, by the affirmative vote of two thirds (⅔) of all members of such governing body, adopt a resolution reciting the substantial terms of such supplemental contract and giving notice that such contract shall become effective on the date specified therein which shall be not less than twenty-five days from the date of the first publication of such resolution. Such resolution shall be published once a week for at least three successive weeks in the newspapers published and of general circulation within such county or municipality. The first of such publications shall be made at least twenty-one days prior to the date set forth in said resolution as the date upon which the supplemental contract shall become effective and the last of such publications shall be made not more than seven days prior to such date. If prior to the date set forth as aforesaid there shall be filed with the clerk of the governing body of the county or municipality a petition in writing signed by twenty per cent (20%) of the qualified electors of such county or municipality requesting an election on the question of whether or not such contract shall be effective, then such contract shall not become effective unless approved by a majority of the qualified electors of the county or municipality who vote therein at an election to be ordered by the appropriate governing body for that purpose. Notice of such election shall be given and such election shall be held and conducted in like manner as approved by law with respect to the submission of bond issues in the county or municipality. If the proposition so submitted shall fail to receive approval at such election, then such contract shall not become effective. If, however, no such petition shall be so filed, or if at such election, or subsequent election, such proposition be assented to by the majority of qualified electors voting therein then such contract shall become effective on the dates set forth in the resolution. Any such contract or supplemental contract shall require that any such city, county, or city and county acting jointly, or authorized port or harbor agency shall pledge all net revenues to be derived from the planned development to the payment of principal and interest on the bonds issued for such planned development, and shall further require such agency to pay the principal and interest on such bonds, and all premiums, fees, or other charges in connection therewith as the same shall mature or become due. The proceeds of any bonds issued for such planned development shall be expended only for the purposes set out in such approved contract. To meet the obligations imposed by this section, any such city, county, or city and county acting jointly, or authorized port or harbor agency is hereby authorized to appropriate therefor any surplus funds from any source available to said city or county, or both acting jointly, or to levy a tax therefor not to exceed five mills on all taxable property in said county or city, or both. The levies made under this provision shall not be reimbursed under the Homestead Exemption Law of 1946, being Sections 27-33-1 through 27-33-65, Mississippi Code of 1972. The ownership, operation and control of such planned development shall remain vested in the city, county, or other authorized port or harbor agency in such manner as is now or may hereafter be authorized by law.

HISTORY: Codes, 1942, § 7564-08; Laws, 1958, ch. 365, § 8; Laws, 1960, ch. 342, § 2; ch. 347.

Cross References — County bonds, see §§ 19-9-1 et seq.
Municipal bonds, see §§ 21-33-301 et seq.
Revenue bonds for county and municipal harbors, see §§ 59-7-501 et seq.

§ 59-5-27. Bond of members of port or harbor agency.

Each member of a port or harbor agency shall give a good and sufficient bond in the amount of ten thousand dollars ($10,000.00) conditioned for the faithful performance of the duties of his office. This shall be effective only upon consummation of an agreement to issue bonds as hereinabove set forth.

HISTORY: Codes, 1942, § 7564-08; Laws, 1958, ch. 365, § 8; Laws, 1960, ch. 342, § 2; ch. 347.

Cross References — Bonds of public officials generally, see §§ 25-1-13 et seq.

§ 59-5-29. Increase in membership of county port authority upon issuance of bonds.

Whenever any bonds of the State of Mississippi have been issued as provided in Sections 59-5-23 and 59-5-25, and where the authorized port or harbor agency is a county port authority organized as provided by Sections 59-9-1 through 59-9-85, the membership of such county port authority shall be increased by two members, to be appointed by the governor who shall be qualified electors of the county, and whose term shall be concurrent with that of the appointing governor. One such member shall be appointed by the governor from the county at large, and the other such member shall be appointed from a municipality located on the navigable channel or waterway on which the port facilities are located, but which municipality shall not be the county seat of such county. The two additional members hereby authorized to be appointed to such county port authority shall be vested with all the rights and duties and powers as members thereof, but such appointments shall be made to such county port authority and shall continue only so long as any such state bonds shall be outstanding and unpaid. The members of such county port authority appointed by the governor under the authority of this section shall make bond and qualify as members of such port authority in the same manner provided by law for the other members of such county port authority, and as provided in this chapter.

HISTORY: Codes, 1942, § 7564-08; Laws, 1958, ch. 365, § 8; Laws, 1960, ch. 342, § 2; ch. 347.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the fourth line of this section. The reference to "Sections 59-9-1 though 59-9-75" was changed to "Sections 59-9-1 through 59-9-85." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Cross References — Appointment of members of county port authority, see § 59-9-9.

§ 59-5-31. Additional powers and authority for certain port commissions and authorities; revenue bonds; tax exemptions.

Any port commission existing under the provisions of Article 3 of Chapter 7 of this title, and any other port commission or port authority now or hereafter constituted by law which has not expressly been granted such powers, may, in addition to all powers now or hereafter vested in it by law, exercise all powers and authority granted to county port authorities or county development commissions under Sections 59-9-15 through 59-9-35, which sections are hereby incorporated herein by reference, and may in addition to such powers acquire, own, operate and maintain gas, electric, water, sewerage or other public utility systems or pipelines and easements necessary thereto. In the event that a joint agreement cannot be consummated jointly with the board as provided in this chapter, the boards of supervisors of any county, or the governing authority of any municipality, or both acting jointly, may issue revenue bonds of such county or municipality, or both, acting jointly, as provided by Section 59-7-311. Such revenue bonds may be issued without an election on resolution of the board of supervisors, governing body of the municipality, or both acting jointly, and shall not be subject to any limitation as to amount, and shall not be included or computed in the statutory limitation of indebtedness of any such county or municipality.

All leases executed by such port commissions or port authorities for port, harbor, commercial or industrial improvements, and all structures and all improvements and other permanent facilities erected, installed or located by such lessees, or their successors or assignees within the limits of any port, harbor or part thereof, may be free and exempt from all state, county and municipal ad valorem taxes if so stipulated in such lease, and for such period as may be fixed in such lease, not to exceed such periods of time as are now authorized or may be hereafter authorized by law.

HISTORY: Codes, 1942, § 7564-09; Laws, 1958, ch. 365, § 9; Laws, 1980, ch. 439, § 1, eff from and after July 1, 1980.

Cross References — Powers of county port commissioners, see §§ 59-7-125, 59-7-205, 59-7-209.

Authority of the board of supervisors of a county to issue revenue bonds for purposes set out in this section, see § 59-9-41.

JUDICIAL DECISIONS

1. Judicial review.

In an action against the Port Authority for an alleged breach of lease, the scope of review of the Port Authority's actions was not limited and the Port Authority was not entitled to deference as the case did not pertain to a determinion of whether the Port Authority acted within its statutory authority and was, instead, an action for breach of contract. Gulfside Casino Pshp. v. Mississippi State Port Auth., 757 So. 2d 250, 2000 Miss. LEXIS 74 (Miss. 2000).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 59-5-31 states that leases executed by port commissions or port authorities "may be free and exempt from all state, county and municipal ad valorem taxes if so stipulated"; based on "this clear and unambiguous language", exemption from ad valorem school taxes is allowed. Wetzel, Mar. 10, 1993, A.G. Op. #93-0111.

Miss. Code Section 59-5-31 does not provide any time limitation on tax exemption. Wetzel, Mar. 10, 1993, A.G. Op. #93-0111.

§ 59-5-33. State ports fund; joint activities or employment of personnel.

The agreement between the board and the city, county or other authorized port or harbor agency shall provide that a fair and proportionate part of the expense of the board administering this chapter, shall be considered a part of the cost of the development or operation of the planned development and such costs shall be paid into a separate state fund in the state treasury, to be known as the state ports fund. Such fund shall be used by the board for the promotion, development, construction, improvement, expansion, maintenance, advertising, and general advancement of the state harbors, ports, rivers, channels, and waterways and may be expended on requisition of the board for such purposes and such other purposes as in the opinion of the board is to the best interest of the ports, harbors, and waterways of this state. The salaries of all officers, employees, or agents of the board, performing duties required by this chapter, and all other expenses incidental to the port, harbor, or waterway operation of the board shall be fixed by the board and payable out of said fund. The board may contract with one or more state port authorities, or any city, county or other authorized port or harbor agency for any joint activity or for the joint employment of personnel with the expense of the activity or salary of such personnel to be paid by the board from operational funds provided by the contracting parties.

HISTORY: Codes, 1942, § 7564-11; Laws, 1958, ch. 365, § 11, eff from and after passage (approved April 28, 1958).

§ 59-5-35. Setting aside or leasing of lands, docks, warehouses, etc.; exemption from certain ad valorem taxes.

The board, acting jointly with the state port authority, is authorized to set aside, or lease all or portions of any lands, roads, docks, sheds, warehouses, elevators, compresses, floating dry docks, graving docks, marine railways, tugboats, or any other necessary or useful improvements constructed or acquired by it to individuals, firms, or corporations, public or private, for port, harbor, commercial or industrial purposes for a period not to exceed ninety-nine years, or to execute a conveyance of sale, except as otherwise limited by law, on such terms and conditions and with such safeguards as would best promote and protect the public interest. Any industrial lease of lands may be executed upon such terms and conditions and for such monetary rental or other consideration as may be found adequate and approved by the board in orders or resolutions authorizing the same. Any covenants and agreements of the lessee to make expenditures in determined amounts, and within such time or times, for improvements to be erected upon the land, by such lessee and to conduct thereon industrial and/or other operations in such aggregate payroll amounts and for such period of time as may be determined and defined in such lease, and to give preference in employment where practical to residents of the State of Mississippi, and to qualified residents of the city and of the county in which such port or harbor is located, shall if included in such lease constitute and be deemed sufficient consideration for the execution of any such lease in the absence of monetary rental or other considerations; and such instrument may contain reasonable provisions giving the lessee the right to remove its or his improvements upon the termination of the lease. All leases theretofore made by any port commission, port authority, or other public agency authorized by law to execute leases for port, harbor, commercial or industrial improvements, which leases are now in effect or which may be hereafter executed by any such public agency or by the board, and all structures and all improvements and other permanent facilities erected, installed or located by such lessees or their successors or assignees within the limits of any port, harbor or part thereof, may be free and exempt from all state, county, and municipal ad valorem taxes if so stipulated in such lease, and for such period as may be fixed in such lease.

HISTORY: Codes, 1942, § 7564-12; Laws, 1958, ch. 365, § 12; Laws, 1960, ch. 342, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 59-5-35 states that leases executed by port commissions or port authorities "may be free and exempt from all state, county and municipal ad valorem taxes if so stipulated"; based on "this clear and unambiguous language", exemption from ad valorem school taxes is allowed. Wetzel, Mar. 10, 1993, A.G. Op. #93-0111.

Miss. Code Section 59-5-35 does not provide any time limitation on tax exemption. Wetzel, Mar. 10, 1993, A.G. Op. #93-0111.

§ 59-5-37. Employment of personnel, execution of contracts, etc., for development, promotion, maintenance, etc., of ports, harbors, rivers, etc.; suits by and against state port authority; advertising and bidding requirements for contracts or purchases; use of design-build method of contracting [Subsection (3) repealed effective July 1, 2024].

(1) The board or State Port Authority, in the performance of its duties, may employ such personnel and make all contracts and purchases incidental to or necessary for the advancement, promotion, development, establishment, insurance, maintenance, repair, improvement and operation of any ports, harbors, rivers, channels and waterways including, if required for its protection, retirement benefits, workers' compensation insurance and other employee benefits for the benefit of any employees of the board or State Port Authority. The board or State Port Authority may establish a trade development and promotion account to pay all direct and necessary expenses for the promotion and development of the state port. The authority is granted the power to sue and be sued in its own name.

(2)(a) The board or State Port Authority may, in its discretion, make such contracts or purchases according to the state purchasing laws. Contracts let for any port, harbor, river, channel or waterway improvements shall be advertised as required by law for the letting of public contracts, and such contracts shall be awarded to the lowest and best bidder who shall make bond as shall be required by the board or State Port Authority conditioned for the faithful prosecution and completion of work according to such contracts, such bond to be furnished by a corporate surety company qualified to do business in this state. However, the board may negotiate and enter into contracts with responsible lessees for the construction of facilities by lessees, such as those referred to in Section 59-5-11, and the acquisition thereof by the board upon such terms and conditions and for such amount as may be approved by the board.

(b) The State Port Authority shall be considered to be a "governing authority" under the state public purchasing laws as that term is defined in Section 31-7-1 and used in Sections 31-7-1 through 31-7-73, and shall not be subject to the jurisdiction of the Department of Finance and Administration, the Public Procurement Review Board or the Bureau of Building, Grounds and Real Property Management under the provisions of Sections 27-104-7, 29-5-2 and 31-11-3.

(3)(a) The board or State Port Authority, in its discretion, may use the design-build method of contracting for the renovation, repair and/or making of other improvements to not more than one (1) freezer and related equipment and/or facilities at the State Port at Gulfport, Mississippi. Notwithstanding any other provision of law to the contrary, any port or port commission may use the design-build method of contracting for the renovation, repair and/or making of other improvements to equipment and/or facilities at the port. For the purposes of this subsection (3), the term "design-build method of contracting" means a contract that combines the design and construction phases of a project into a single contract and the contractor is required to satisfactorily perform, at a minimum, both the design and construction of the project.

(b) This subsection (3) shall stand repealed from and after July 1, 2024.

HISTORY: Codes, 1942, § 7564-13; Laws, 1958, ch. 365, § 13; Laws, 1962, ch. 389; Laws, 1976, ch. 400, § 2; Laws, 1984; reenacted and amended, 1985, ch. 474, § 17; Laws, 1986, ch. 438, § 39; Laws, 1987, ch. 483, § 40; Laws, 1988, ch. 442, § 37; Laws, 1989, ch. 537, § 35; Laws, 1990, ch. 518, § 36; Laws, 1991, ch. 618, § 36; Laws, 1992, ch. 491, § 38; Laws, 1997, ch. 401, § 1; Laws, 2001, ch. 321, § 1; Laws, 2008, ch. 544, § 1; Laws, 2010, ch. 535, § 1; Laws, 2012, ch. 485, § 5; Laws, 2013, ch. 347, § 1; Laws, 2016, ch. 417, § 1, eff from and after July 1, 2016; Laws, 2020, ch. 404, § 1, eff from and after July 1, 2020.

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Exemption of state port authority from certain regulations governing construction by the public procurement review board, see § 27-104-1.

Public contracts generally, see §§ 31-1-1 et seq.

Exemption of state port authority from certain public purchasing requirements, see § 31-7-1.

Exemption of state port authority from certain requirements of the department of finance and administration, see § 31-11-3.

Worker's compensation, see §§ 71-3-1 et seq.

JUDICIAL DECISIONS

1. Venue.

Pursuant to the general venue statute, venue was proper in the First Judicial District of Harrison County because the Mississippi State Port Authority "resided" there; the Port Authority's offices, operations, employees, and commissioners were located in Harrison County, and thus, the Port Authority both "resided" and had its "principal place of business" in Harrison County. Miss. State Port Auth. at Gulfport v. S. Indus. Contrs. LLC, 271 So. 3d 742, 2018 Miss. App. LEXIS 653 (Miss. Ct. App. 2018).

§ 59-5-39. Acquisition of rights of way, land, etc.

For the acquiring of rights-of-way, land and property including existing easements, restrictive covenants and reversionary estates necessary for the purposes herein authorized, the board shall have the right and power to acquire the same by purchase, negotiation or condemnation, and should it elect to exercise the right of eminent domain, it may proceed in the manner provided by the general laws of the State of Mississippi for procedure by any county, municipality or corporation organized under the laws of this state, or in any other manner provided by law. The power of eminent domain shall apply not only as to all property of private persons or corporations, but also as to property already devoted to public use including leaseholds, excepting interests in property owned by levee boards, drainage districts, or other flood control agencies. However, the board shall have no authority to acquire without the consent of the owner thereof any property operated and used for port, harbor or industrial purposes or such purposes as the board is authorized to acquire and use property for, unless an actual necessity therefor be alleged and proven. The board is authorized to accept donations of lands, rights therein, monies and materials required for the maintenance or development of any port or harbor. The board may exchange any property or properties acquired under the authority of this chapter for other property or properties usable in carrying out the powers hereby conferred, and also remove from lands needed for its purposes and reconstruct on other locations, buildings, utilities, terminals, railroads or other structures upon the payment of just compensation, if it is necessary so to do in order to carry out any of its plans for port development. The title to all land or property acquired under the authority of this chapter shall vest in the State of Mississippi. Nothing contained in this section shall be construed to authorize the taking by eminent domain of any private property except for necessary public use.

HISTORY: Codes, 1942, § 7564-14; Laws, 1958, ch. 365, § 14; Laws, 1984, ch. 488, § 248, eff from and after July 1, 1984.

Cross References — Taking private property for public use, see Miss. Const. Art. 3, § 17.

Eminent domain, see §§ 11-27-1 et seq.

§ 59-5-41. State bonds; issuance, terms, and conditions; interim financing of construction projects.

The board is hereby authorized, at one time or from time to time, to petition by resolution to the State Bond Commission for the issuance of negotiable bonds of the State of Mississippi by the State Bond Commission to provide funds for the purpose of paying all or any part of the cost of the acquisition of any state port, harbor, waterway or part thereof and the planned development thereof or to complete the planned development of any port, harbor, waterway or part thereof, but in no event shall the amount of such bonds issued exceed the actual cost of an approved plan for the development of any port, harbor, waterway or part thereof. However, no bonds shall be issued under this chapter after April 25, 2013. The principal of and the interest on such bonds shall be payable from a special fund to be provided for that purpose in the manner hereinafter set forth. Such bonds shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times, be redeemable prior to maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the State Bond Commission. Such bonds shall mature or otherwise be retired in annual installments beginning not more than five (5) years from date thereof and extending not more than forty

(40) years from date thereof. Such bonds shall be signed by the Chairman of the State Bond Commission, or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, attested by the Secretary of the State Bond Commission. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds, who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser, or had been in office on the date such bonds may bear.

Any state port authority organized and existing under the provisions of this chapter, with the concurrence of the board, shall have the power to obtain loans from banking institutions authorized to do business in the State of Mississippi, for necessary interim financing pending the receipt of the proceeds from the sale of bonds, on such terms and at such interest rates as the authority, with the concurrence of the board, may deem feasible. All such interim loans shall be payable from the proceeds of the permanent obligations when same shall be sold and issued, or from the proceeds of any federal grant.

HISTORY: Codes, 1942, § 7564-15; Laws, 1958, ch. 365, § 15; Laws, 1967, Ex. Sess. ch. 7, § 2; Laws, 1968, ch. 431, § 1; Laws, 1974, ch. 484, § 1; Laws, 1984, ch. 488, § 249; Laws, 2013, ch. 567, § 5, eff from and after passage (approved Apr. 25, 2013.).

Cross References — State bond commission, see §§ 31-17-1 et seq.

§ 59-5-43. Negotiability of bonds; exemption from taxation.

All bonds and interest coupons issued under the provisions of this chapter shall be and are hereby declared to have all the qualities and incidents of negotiable instruments under the provisions of the Mississippi Uniform Commercial Code and in exercising the powers granted by this chapter, the board and/or state bond commission shall not be required to and need not comply with the provisions of the Uniform Commercial Code. Such bonds and income therefrom shall be exempt from all taxation within the State of Mississippi.

HISTORY: Codes, 1942, § 7564-16; Laws, 1958, ch. 365, § 16; Laws, 1967, Ex. Sess. ch. 7, § 3, eff from and after passage (approved June 29, 1967).

Cross References — General exemptions from ad valorem taxes, see §§ 27-31-1 et seq.
Uniform Commercial Code, see §§ 75-1-101 et seq.

§ 59-5-45. Manner and price of sale of bonds; interest; maturity and redemption.

The State Bond Commission shall sell such bonds at public sale or private sale, and for such price as it may determine to be for the best interest of the State of Mississippi, but no sale shall be made at a price of less than ninety-eight percent (98%) of par, plus accrued interest. However, the One Hundred Thirty Million Dollars ($130,000,000.00) additional bonds herein authorized shall mature annually, with all maturities not longer than twenty-five (25) years, and may be sold for a price of not less than ninety-eight percent (98%) of par, plus accrued interest, to date of delivery of the bonds to the purchaser. All bonds shall bear interest at such rate or rates not exceeding that allowed in Section 75-17-101, Mississippi Code of 1972. All interest accruing on such bonds so issued shall be payable semiannually or annually.

No interest payment due on any bond shall be evidenced by more than one (1) coupon and supplemental coupons will not be permitted.

Notice of the public sale of any such bonds shall be published at least two (2) times, the first of which shall be made not less than ten (10) days prior to the date of sale, and shall be so published in one or more newspapers having a general circulation in the City of Jackson and in one or more other newspapers or financial journals with a large national circulation, to be selected by the State Bond Commission.

The State Bond Commission, when issuing any bonds under the authority of this chapter, shall provide that bonds maturing eleven (11) or more years after the date of the issuance of such bonds may, at the option of the State of Mississippi, be called in for payment and redemption at the call price named therein and accrued interest, or on the tenth anniversary of the date of issue, or on any interest payment date thereafter prior to maturity.

HISTORY: Codes, 1942, § 7564-17; Laws, 1958, ch. 365, § 17; Laws, 1967, Ex. Sess. ch. 7, § 4; Laws, 1974, ch. 484, § 2; Laws, 1975, ch. 456; Laws, 1976, ch. 415; Laws, 1980, ch. 530, § 4; Laws, 1982, ch. 425; Laws, 1983, ch. 541, § 35; Laws, 1991, ch. 397 § 2; Laws, 1993, ch. 472, § 2, eff from and after passage (approved March 27, 1993).

Cross References — State bond commission, see §§ 31-17-1 et seq.
Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

§ 59-5-47. Disposition of proceeds of bonds.

The proceeds of bonds issued under authority of this chapter shall be paid into a special fund or funds in banks qualified to act as depositories for the city or county in which the port or harbor is located, allocated in such equitable manner as the board may determine and such depositories shall qualify as such by depositing bonds or other securities authorized by law to secure deposits in state depositories. The proceeds of such bonds shall be used solely for payment of the cost of the planned development and the redeeming of any outstanding bonds and shall be disbursed upon order of the board with such restrictions, if any, as the resolution authorizing the issuance of the bonds may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the planned development, and the redeeming of any outstanding bonds, unless otherwise provided in the resolution authorizing the issuance of the bonds, additional bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution authorizing the issuance of bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which the bonds were issued, the surplus shall be paid into the fund established for the payment of the principal of and the interest on such bonds.

HISTORY: Codes, 1942, § 7564-18; Laws, 1958, ch. 365, § 18, eff from and after passage (approved April 28, 1958).

Cross References — Depositories for funds of local governments, see §§ 27-105-301 et seq.

§ 59-5-49. Validation of bonds.

Such bonds as are authorized by this chapter may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this chapter. The bonds authorized under the authority of this chapter may, in the discretion of the state bond commission, be validated in the chancery court of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, for the validation of county, municipal, school district, and other bonds. The necessary papers for such validation proceedings shall be transmitted to the state bond attorney by the attorney general, and the required notice shall be published in a newspaper published in the City of Jackson, Mississippi, and in a newspaper of general circulation published in the city or county where the planned development is located.

HISTORY: Codes, 1942, § 7564-19; Laws, 1958, ch. 365, § 19, eff from and after passage (approved April 28, 1958).

Cross References — State bond attorney, see § 31-13-1.
Validation of bond issues, see §§ 31-13-3 et seq.
State bond commission, see §§ 31-17-1 et seq.

§ 59-5-51. Payment of interest and principal on bonds; limitation on amount of bonds issued.

(1) The bonds issued under the provisions of this chapter shall be payable from the special fund provided therefor as hereinafter set out and shall be the general obligations of the State of Mississippi and backed by the full faith and credit of the state, and if the funds supplied by the board to the State Treasurer from the sources prescribed by this chapter be insufficient to fully pay the interest on the bonds when due or to pay the principal of the bonds when due or when declared to be due as provided in the resolution authorizing the

issuance of the bonds, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated, and all such bonds shall contain recitals on their face substantially covering the foregoing provisions of this section.

The amount of bonds issued for the acquisition and planned development of any one state port, harbor or waterway shall not exceed the sum of Eighty Million Dollars ($80,000,000.00) outstanding at any one time, nor shall any additional bonds be issued to complete the planned development of any other port, harbor or waterway to exceed in the aggregate the sum of Eighty Million Dollars ($80,000,000.00), outstanding at any one (1) time. However, such limitation on the amount of bonds that may be issued shall not apply to any additional bonds issued in connection with the planned development of any other port, harbor or waterway not to exceed in the aggregate the sum of One Hundred Thirty Million Dollars ($130,000,000.00) notwithstanding the provisions of Section 59-5-47, nor any other provisions to the contrary. The entire proceeds of the One Hundred Thirty Million Dollars ($130,000,000.00) shall be used solely for the construction or acquisition of ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, dredges, floating dry docks, graving docks, marine railways, tugboats or any other facilities required or incidental to the construction, outfitting, dry docking or repair of ships or vessels. However, no such additional bonds shall be issued except where such facility or facilities are to be leased or sold, in whole or in part, for industrial purposes and the annual payments made under the lease contract and/or proceeds of sale shall be sufficient to pay the interest on the bonds when due and to pay the principal of the bonds at or prior to maturity as provided in the resolution authorizing the issuance of the bonds to finance such project, and all costs in connection therewith. Such lease shall have been first fully guaranteed by such person, firm or corporation, if any, having control, ownership or management of the lessee. Such lease and/or sale contract and the terms and conditions thereof, shall require the joint and several approval of the board of supervisors of the county in which the port is located, the port authority and the Department of Economic and Community Development. No borrowing under this section shall be finalized prior to ten (10) days after written notice of intent to borrow is furnished to the Legislative Budget Office.

No bonds shall be issued under this chapter after April 25, 2013.

(2) The full five-mill ad valorem levy provided for by this chapter shall be levied and collected as needed for the retirement of any bonds issued under this chapter, and all rents, emoluments and charges made and collected by the port authority, less maintenance cost and incidental expenses, shall be covered in a fund to be used to retire all bonds issued under this chapter; and also all receipts from the two-mill state ad valorem levy, disbursed to such city, county or other port or harbor agency, shall be used to service such bonds.

(3) In the event any city, county or other port, or harbor agency, however designated, shall pay to the board an amount insufficient to meet all bond and interest payments when due on their respective obligations, then any such delinquency paid by the state shall be deducted from future reimbursements

for homestead exemptions under the provisions of Sections 27-33-1 through 27-33-65 from that portion reimbursed to the general county fund. Should the amount deducted from the homestead exemption reimbursement be insufficient to meet the delinquency, then the remainder of such delinquency shall be deducted from any distributions made under the provisions of Section 27-5-101 for gasoline taxes.

(4) In the event all of the above-listed sources prove inadequate to pay the principal and interest on the bonds issued and paid for by the State of Mississippi under this chapter, then such city, county or other port or harbor agency shall levy and collect an additional ad valorem levy of not more than five (5) mills per year on all the taxable property of such city, county or other port or harbor agency, which funds so secured shall be applied toward such obligations to the State of Mississippi.

(5) The requirements of subsections (2), (3) and (4) of this section shall not be applicable to the additional bonds in the aggregate amount of One Hundred Thirty Million Dollars ($130,000,000.00) authorized in subsection (1) of this section for the construction or acquisition of ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, dredges, floating dry docks, graving docks, marine railways, tugboats or any other facilities required or incidental to the construction, outfitting, dry docking or repair of ships or vessels; provided, such county shall, at the time of issuance of any of such bonds, convey to the State of Mississippi all of its right, title and interest in and to all of the land and above-mentioned shipbuilding facilities, together with the county's right, title and interest in and to any leases, deeds, contracts or other customary business instruments which have been entered into in connection with the land and shipbuilding facilities, but such conveyance or conveyances shall be subject to the terms and provisions of such leases, deeds, contracts or other customary business instruments entered into in connection therewith. The right, title and interest of the State of Mississippi in the land and shipbuilding facilities shall be under the supervision and control of the Department of Economic and Community Development.

HISTORY: Codes, 1942, § 7564-20; Laws, 1958, ch. 365, § 20; Laws, 1960, ch. 404; Laws, 1964, ch. 425; Laws, 1966, ch. 447, § 1, ch. 448, § 1; Laws, 1967, Ex. Sess. ch. 7, § 5; Laws, 1968, ch. 432, § 1; Laws, 1980, ch. 530, § 1; Laws, 1984, ch. 488, § 250; Laws, 1990, ch. 570, § 14; Laws, 1995, ch. 471, § 1; Laws, 2013, ch. 567, § 6, eff from and after passage (approved Apr. 25, 2013).

Editor's Notes — Laws of 1990, ch. 570, § 20, effective July 1, 1990, provides as follows:

"(1) Any attorney's fees paid as the result of the issuance of bonds under this act shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of bonds under this act shall be subject to negotiation but in no event shall exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

"(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under this act contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

"(3) In connection with the issuance and sale of bonds authorized under this act, the State Bond Commission shall select a bond attorney or attorneys who are listed in the 'Directory of Municipal Bond Dealers of the United States' and who are members in good standing of the Mississippi State Bar Association and licensed to practice law in the State of Mississippi; however, upon a finding by the commission spread on its official minutes that the public interest will best be served thereby, the commission may select any bond attorney or attorneys listed in the 'Directory of Municipal Bond Dealers of the United States.' "

Cross References — Joint legislative budget committee and legislative budget office generally, see §§ 27-103-101 et seq.

§ 59-5-53. Withdrawals of bond proceeds from special fund.

The funds which are transferred from the sale of bonds under this chapter to the special fund in the qualified depositories set up for each separate port, harbor, or part thereof may be withdrawn only in the following manner: said funds shall be paid by such qualified depositories upon warrants issued by the state auditor of public accounts, which warrants shall be issued upon requisition of the board or state port authority. All expenditures ordered by the board or state port authority shall be entered upon their minutes, and the board and each state port authority shall submit a full report of their work and all the transactions carried on by them, and a complete statement of all their revenues and expenditures to the legislature at each regular session of the legislature.

HISTORY: Codes, 1942, § 7564-28; Laws, 1958, ch. 365, § 28, eff from and after passage (approved April 28, 1958).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — State depositories, see §§ 27-105-1 et seq.

Depositories for local governments, see §§ 27-105-301 et seq.

§ 59-5-55. Use of net revenues, rents, and earnings from state owned ports.

All net revenues, rents, and earnings from the operation or maintenance of any state owned port or harbor, or any part thereof, shall be set aside by the board exclusively for the payment of any bonds issued by the state for such port or harbor, or any part thereof, and shall not be commingled with the funds of any other state port or harbor, or any part thereof, but shall be expended by the board exclusively for the payment of such bonds as provided in Section 59-5-51, and if no such bonds shall be outstanding, then by the state port authority for the improvement, operation, advancement, development, maintenance and advertising of the port to which such funds have accrued.

HISTORY: Codes, 1942, § 7564-10; Laws, 1958, ch. 365, § 10, eff from and after passage (approved April 28, 1958).

§ 59-5-57. Payment of county's share of state ad valorem taxes for harbor purposes to state port authority.

In the event of state ownership of any port or harbor, in its entirety, in any county which may now or hereafter be authorized by law to receive a portion of the state ad valorem tax for port or harbor purposes, such portion of the state ad valorem tax shall be paid to the state port authority and shall be used for the improvement, development, operation and expansion of such port under the provision of this chapter, and the port fund of such county to which such ad valorem tax is paid shall be subject to the requisition of the state port authority.

HISTORY: Codes, 1942, § 7564-10; Laws, 1958, ch. 365, § 10, eff from and after passage (approved April 28, 1958).

§ 59-5-59. Allocation of revenues, rents and earnings to payment of bonds; sinking fund.

The net revenues, rents, and earnings derived from any planned development or the net revenues, rents, and earnings received by the board produced by a state port, harbor, or part thereof, for which bonds have been issued, shall be pledged and allocated by the board to the payment of the principal of and interest on the bonds issued for such planned development as the resolution authorizing the issuance of the bonds may provide, and such pledge may include funds received from one or more or all sources available to such planned development and shall be set aside at regular intervals into a sinking fund, which sinking fund shall be pledged to and charged with the payment of:

(a) The interest upon such bonds as such interest shall accrue.

(b) The principal of the bonds when due, or when declared to be due, as prescribed by the resolution authorizing the bonds.

(c) The necessary charges of the paying agent or paying agents for paying principal and interest of and on such bonds.

(d) Any premium on bonds retired by call or purchase as may be provided therein.

(e) Net revenues shall be defined in the agreement between the board and the city or county, or other authorized port or harbor agency, as provided in Sections 59-5-17 and 59-5-19.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing any issue of bonds, but except as may otherwise be provided in such resolution such sinking fund shall be a fund for the benefit of all bonds issued under such resolution, without distinction or priority of one over the other. Subject to the provisions of the resolution authorizing the issuance of the bonds, surplus moneys in the sinking fund may be applied to the purchase or redemption of any of such bonds, and any such bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

HISTORY: Codes, 1942, § 7464-21; Laws, 1958, ch. 365, § 21; Laws, 1967, Ex. Sess. ch. 7, § 6, eff from and after passage (approved June 29, 1967).

Cross References — Special municipal tax to provide sinking fund, see § 59-3-5.
Sinking fund for municipal port purposes, see § 59-7-13.
Power of municipality to provide for sinking fund, see § 59-7-427.
Sinking fund for joint county and municipal harbor and port facilities, see § 59-9-59.

§ 59-5-61. Refunding bonds.

The board is authorized to provide by resolution for the issuance of refunding bonds by the state bond commission for the purpose of refunding any bonds issued under the provisions of this chapter and then outstanding, together with interest thereon to the date of such refunding bonds, and redemption premium thereon, if any. The issuance of such refunding bonds, the maturity, and all other details thereof, the rights of the holders thereof and the duties of the board and state port authority in respect thereto shall be governed by the provisions of this chapter in so far as the same may be applicable.

HISTORY: Codes, 1942, § 7564-22; Laws, 1958, ch. 365, § 22, eff from and after passage (approved April 28, 1958).

Cross References — Refunding bonds generally, see §§ 31-15-1 et seq.

§ 59-5-63. Bonds as legal investments and securities for deposits of public funds.

All bonds issued under the provisions of this chapter shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies, the board of trustees of the public employees' retirement system, and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

HISTORY: Codes, 1942, § 7564-23; Laws, 1958, ch. 365, § 23, eff from and after passage (approved April 28, 1958).

Cross References — Investment of excess social security funds, see § 25-11-121.
Investments by domestic insurance companies, see §§ 83-19-51, 83-19-53.
Investment of trust funds held by fiduciaries, see §§ 91-13-1 et seq.
Investments by guardians, see § 93-13-57.

§ 59-5-65. Representation of State Bond Commission by Attorney General; payment of costs of sale, issuance and delivery of bonds.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for. The State Bond Commission is hereby authorized and empowered to pay the costs that are incident to the sale, issuance and delivery of the bonds herein provided for, and such costs may be paid for out of the proceeds derived from the sale of such bonds.

HISTORY: Codes, 1942, § 7564-27; Laws, 1958, ch. 365, § 27; Laws, 1991, ch. 397 § 3; Laws, 2012, ch. 546, § 27, eff from and after July 1, 2012.

Cross References — Attorney general, see §§ 7-5-1 et seq.
State bond commission, see §§ 31-17-1 et seq.

§ 59-5-67. Annual audit of state port authorities.

The books and accounts of all state port authorities shall be audited at the end of each fiscal year by the state auditor. A copy of the audit shall be filed with the governor, the state auditor, the state fiscal management board, legislative budget office and the Mississippi Board of Economic Development, and a copy shall be kept on file in the office of the particular state port authority so audited.

HISTORY: Codes, 1942, § 7564-32; Laws, 1970, ch. 304, § 1; Laws, 1984, ch. 488, § 251, eff from and after July 1, 1984.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Section 57-1-2 provides that the term "Board of Economic Development" shall mean the "Mississippi Development Authority".

§ 59-5-69. Annual budget of state port authorities.

Each state port shall adopt a complete, detailed and itemized budget for each fiscal year and all expenditures shall be made only pursuant to appropriation approved by the legislature and as provided by law.

HISTORY: Codes, 1942, § 7564-33; Laws, 1970, ch. 304, § 2; Laws, 1984, ch. 488, § 252, eff from and after July 1, 1984.

CHAPTER 6.

COMPACT FOR DEVELOPMENT OF DEEP DRAFT HARBOR AND TERMINAL

Sec.
59-6-1. "Deep Draft Harbor and Terminal" defined.
59-6-3. Authorization of compact.
59-6-5. Basic form of compact.
59-6-7. Grant of powers; authority and duties of state officers; appointment of members of authority.

§ 59-6-1. "Deep Draft Harbor and Terminal" defined.

For the purpose of this chapter, the term "Deep Draft Harbor and Terminal" means a structure, series of structures, or facility of any type located on the continental shelf off the coast designed to accommodate deep draft vessels whose draft is greater than the depths of the present United States' harbors and waterways commonly used by oceangoing traffic, and includes all functionally-related structures and facilities which are necessary or useful to the operation of the terminal whether on land or seaward of the main structure or facility.

HISTORY: Laws, 1973, ch. 379, § 1, eff from and after passage (approved March 26, 1973).

RESEARCH REFERENCES

Practice References.
USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-6-3. Authorization of compact.

The governor, on behalf of this state, is hereby authorized to execute a compact, in substantially the form as provided hereinafter, with the State of Alabama.

HISTORY: Laws, 1973, ch. 379, § 2, eff from and after passage (approved March 26, 1973).

§ 59-6-5. Basic form of compact.

The basic form of the compact shall be as follows:

ARTICLE I. The purpose of this compact is to promote the development of a deep draft harbor and terminal to be located on the continental shelf of the United States, in the Gulf of Mexico, and to establish a joint interstate authority to assist in this effort.

ARTICLE II. This compact shall become effective immediately upon ratification by the legislature of each state. Any state not mentioned in this section which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.

ARTICLE III. The states which are parties to this compact (hereinafter referred to as "party states") do hereby establish and create a joint agency which shall be known as the Gulf Coast Superport Development Authority (hereinafter referred to as the "Authority"). The membership of which authority shall consist of the governor of each party state and five (5) other citizens of each party state, to be appointed by the governor thereof. Each appointive member of the authority shall be a citizen of that state who is interested in the promotion and development of deep draft harbor and terminals, and in the economic and industrial development of the south. The appointive members of the authority shall serve for terms of four (4) years each. Vacancies on the authority shall be filled by appointment by the governor for the unexpired portion of the term. The members of the authority shall not be compensated, but each shall be entitled to actual expenses incurred in attending meetings, or incurred otherwise in the performance of his duties as a member of the authority. The members of the authority shall hold regular quarterly meetings and such special meetings as its business may require. They shall choose annually a chairman and vice-chairman from among their members, and the chairmanship shall rotate each year among the party states in order of their acceptance of this compact. The secretary of the authority (hereinafter provided for) shall notify each member in writing of all meetings of the authority in such a manner and under such rules and regulations as the authority may prescribe. The authority shall adopt rules and regulations for the transaction of its business; and the secretary shall keep a record of all its business and shall furnish a copy thereof to each member of the authority. It shall be the duty of the authority, in general, to promote, encourage, and coordinate the efforts of the party states to secure the development of a Gulf Coast deep draft harbor and terminal. Toward this end, the authority shall have power to hold hearings; to conduct studies and surveys of all problems, benefits, and other matters associated with the development of a Gulf Coast deep draft harbor and terminal, and to make reports thereon; to acquire, by gift or otherwise, and hold and dispose of such money and property as may be provided for the proper performance of their function; to cooperate with other public or private groups, whether local, state, regional, or national, having an interest in the development of deep draft harbors and terminals; to formulate and execute plans and policies for emphasizing the purpose of this compact before the Congress of the United States and other appropriate offices and agencies of the United States; and to exercise such other powers as may be appropriate to enable it to accomplish its functions and duties in connection with the development of a deep draft harbor and terminal and to carry out the purposes of this compact.

ARTICLE IV. The authority shall appoint an executive secretary, who shall be the compact administrator. His term of office shall be at the pleasure of the authority and shall receive such compensation as the authority shall prescribe. He shall maintain custody of the authority's books, records, and papers, which he shall keep at the office of the authority, and he shall perform all functions and duties, and exercise all powers and authorities, that may be delegated to him by the authority.

ARTICLE V. Each party state agrees that, when authorized by its legislature, it will from time to time make available and pay over to the authority such funds as may be required for the establishment and operation of the authority. The contribution of each party state shall be in the proportion that its population bears to the total population of the states which are parties hereto, as shown by the most recent official report of the United States Bureau of the Census, or upon such other basis as may be agreed upon.

ARTICLE VI. Nothing in this compact shall be construed so as to conflict with any existing statute, or to limit the powers of any party state, or to repeal or prevent legislation, or to authorize or permit curtailment or diminution of any other harbor or terminal project, or to affect any existing or future cooperative arrangement or relationship between any federal agency or a party state.

ARTICLE VII. This compact shall continue in force and remain binding upon each party state until the legislature or governor of each or either state takes action to withdraw therefrom; provided that such withdrawal shall not become effective until six (6) months after the date of the action taken by the legislature or governor. Notice of such action shall be given to the other party state or states by the secretary of state of the party state which takes such action.

HISTORY: Laws, 1973, ch. 379, § 3, eff from and after passage (approved March 26, 1973).

Comparable Laws from other States — Alabama: Code of Ala. §§ 33-9-1 and 39-9-2.

RESEARCH REFERENCES

Practice References.
USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-6-7. Grant of powers; authority and duties of state officers; appointment of members of authority.

There is hereby granted to the governor, to the members of the Gulf Coast Superport Development Authority for Mississippi and to the compact administrator all the powers provided for in said compact and in this chapter. All officers of the State of Mississippi are hereby authorized and directed to do all things falling within their respective jurisdictions which are necessary or incidental to carrying out the purpose of said compact. The members of the authority appointed by the governor of the State of Mississippi under the provisions of Article III of the compact shall be with the advice and consent of the senate.

HISTORY: Laws, 1973, ch. 379, § 4, eff from and after passage (approved March 26, 1973).

CHAPTER 7.

COUNTY AND MUNICIPAL HARBORS

Article 1.	General Provisions.	59-7-1
Article 3.	Supplementary Provisions.	59-7-101
Article 5.	Supplemental and Additional Powers.	59-7-201
Article 7.	Cumulative Provisions.	59-7-301
Article 9.	Additional Cumulative Provisions.	59-7-401
Article 10.	Port Commissions in Counties Bordering on Mississippi River.	59-7-451
Article 11.	Revenue Bonds.	59-7-501

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
59-7-1. Payment of portion of state ad valorem taxes collected by certain counties into county depository.
59-7-3. Port fund.
59-7-5. Authorization of municipal harbor improvements.
59-7-7. Operation of improvements; disposition of revenues; annual report.
59-7-9. Expenditure of funds arising under article; bonds generally.
59-7-11. Authorization for issuance of bonds generally.
59-7-13. Details of bonds; supplemental powers and authorizations for issuance of bonds.
59-7-15. Conduct of bond issue election generally.
59-7-17. Qualifications of electors; form and marking of ballots; issuance of bonds without election.
59-7-19. Issuance of bonds; maturities, interest, and execution; payment of principal and interest on bonds.
59-7-21. Disposition of proceeds from bonds; penalty for diversion; guarantee of payment.

§ 59-7-1. Payment of portion of state ad valorem taxes collected by certain counties into county depository.

In all counties in the State of Mississippi in which there is located a harbor or port of entry where commodities are exported to foreign nations, and where there is maintained a channel and/or harbor or port to a depth of not less than twenty feet, the tax collector of said county shall pay into the county depository, the amount of two mills of all ad valorem taxes due by said county to the State of Mississippi which is collected by the tax collector of said county or which may be collected by any other lawful taxing agency of such county and state for such county.

HISTORY: Codes, 1942, § 7565; Laws, 1932, ch. 269; Laws, 1968, ch. 361, § 11, eff from and after January 1, 1972.

Cross References — Depositories for funds of local governments, see §§ 27-105-301 et seq.

Development of county harbor facilities by bridge and park commissions, see §§ 55-7-1 et seq.

State ports and harbors, see §§ 59-5-1 et seq.

Bond provisions which supersede the bond provisions of this article, see § 59-7-301.

Counties authorized to withhold state tax for port funds, see § 59-7-303.

Authority of certain counties to levy tax for port fund, see § 59-7-403.

County port authorities or development commissions, see §§ 59-9-1 et seq.

County port and harbor commissions, see §§ 59-11-1 et seq.

Harbor improvements by coast counties, see §§ 59-13-1 et seq.

Small craft harbors, see §§ 59-15-1 et seq.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 79-81.

CJS.
65 C.J.S., Navigable Waters § 36.

§ 59-7-3. Port fund.

The board of supervisors of the county or counties designated in section 59-7-1 shall place all money so retained and collected in the county depository in the county to the credit of a fund which shall be known as a port fund, and such fund so deposited shall be used only for the maintenance, construction, promotion, advertising and general advancement of the port of entry so located in said county, and the fund shall be expended by the board of supervisors of the county for the maintenance, construction, promotion, advertisement, and general advancement of any port or ports of entry in said county or counties and the payment of any outstanding bonds and interest thereon heretofore or hereafter issued for port purposes by any municipality in which said port or ports are located as hereinafter provided.

HISTORY: Codes, 1942, § 7566; Laws, 1932, ch. 269; Laws, 1935, ch. 66.

OPINIONS OF THE ATTORNEY GENERAL

A Port Commission possesses the power to employ or contract for personnel and consulting services to assist it in the performance of its responsibility. Moss, Feb. 27, 2004, A.G. Op. 04-0050.

§ 59-7-5. Authorization of municipal harbor improvements.

The authorities of any municipality in which there is situated and located, in whole or in part, a port of entry through which commodities are imported and exported to foreign nations, which maintains a channel and/or harbor to a depth of not less than twenty feet, are hereby given the authority to engage in, through the agency hereinafter provided and designated and such other agencies as hereinafter may be provided by law, work of internal improvement, or promoting, developing, constructing, maintaining, and operating harbors or seaports within the state and its jurisdiction, acting through the commission hereinafter provided for, shall have the power to acquire, purchase, install, lease, construct, own, hold, maintain, equip, use, control and operate at seaports, wharves, piers, docks, quays, grain elevators, cotton compresses, warehouses and other water and rail terminals and other structures, and facilities needful for the convenient use of the same in the aid of commerce including the dredging of approaches thereto, provided that such work on improvements and facilities shall always be and remain under the management and control of said municipality through the governing agency hereinafter provided and designated, or other such governing agency or agencies as hereinafter may be provided by law. The entire cost of the said municipality of engaging in such work or development shall not exceed the sum of one million dollars ($1,000,000.00).

HISTORY: Codes, 1942, § 7567; Laws, 1932, ch. 269.

Cross References — Authority of municipalities to operate port facilities, see § 59-7-305.

OPINIONS OF THE ATTORNEY GENERAL

A Port Commission possesses the power to employ or contract for personnel and consulting services to assist it in the performance of its responsibility. Moss, Feb. 27, 2004, A.G. Op. 04-0050.

§ 59-7-7. Operation of improvements; disposition of revenues; annual report.

All improvements, constructed by and under the provisions of this article, shall be operated under the control of a port commission as provided in Chapter 1 of this title. All revenue created or collected from the use of said docks, harbors and facilities of whatsoever nature shall be paid into the city treasury of said port of entry to be used exclusively for the advancement, development and advertising of said port in whatsoever method or manner said port commissioners shall see fit, and all revenue provided for in this article, either by levy or collection from said docks and harbor facilities may be paid to the retirement of any bonds heretofore issued or hereafter issued by any such municipality for wharf construction or other port purposes, regardless of the time of issuance of such bonds. Said port commissioners of said port of entry shall make an annual report to the governor of the State of Mississippi, to the state legislature, to the board of supervisors, and to the municipal governing authorities.

HISTORY: Codes, 1942, § 7568; Laws, 1932, ch. 269; Laws, 1935, ch. 66; Laws, 1970, ch. 406, § 1, eff from and after July 1, 1970.

Cross References — Creation of port commission, see § 59-1-1.
Operation of port facilities by port commission, see § 59-7-309.

§ 59-7-9. Expenditure of funds arising under article; bonds generally.

All monies accruing by virtue of this article, either through revenues, tariffs, or bonds, or through other sources, shall be expended at the direction of the port commission appointed for any port of entry, as designated herein, and any bond issue hereunder by any municipality, coming under the provisions of this article, shall be exclusive of any and all other bonds issued by said municipality, and the same shall not be limited as now provided by law.

HISTORY: Codes, 1942, § 7569; Laws, 1932, ch. 269.

§ 59-7-11. Authorization for issuance of bonds generally.

The authorities of any municipality in which there is situated and located in whole or in part a port of entry through which commodities are imported or exported are hereby given authority to issue bonds or other obligations to construct all needful improvement or improvements in harbors within their corporate limits, and including the deepening of any part of said harbor or extending, enlarging and adding to the same by dredging of any part of said harbor or extending inland, to acquire, construct, repair and improve public wharves and docks of said municipality in connection with said harbor; to own, construct, lease and maintain sheds, warehouses, elevators, compresses and other works of public improvement, including roadways or rail trackage necessary or useful for such port, harbor and/or docks and wharf purposes.

HISTORY: Codes, 1942, § 7570; Laws, 1932, ch. 269.

Cross References — Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

Details of bonds, see §§ 31-21-5 and 59-7-13.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 72 et seq.

§ 59-7-13. Details of bonds; supplemental powers and authorizations for issuance of bonds.

All of the bonds issued pursuant to the authority set forth in Section 59-7-11 shall be lithographed or engraved, and printed in two (2) or more colors, to prevent counterfeiting, and shall be in sums not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) each, and shall be registered as issued, be numbered in a regular series from one (1) upward, be signed by the mayor and countersigned by the clerk who shall impress the municipal seal upon each bond as it is issued; and every bond shall specify on its face the purpose for which it was issued; and the total amount authorized to be issued and each shall be payable to bearer. All such monies above referred to, as retained by the boards of supervisors, shall first be appropriated by the boards of supervisors for the payment of interest and sinking fund for any and all bonds issued by the municipality for port purposes and the balance, if any, shall be expended by the boards of supervisors by and under the direction and advice of the port commission of said municipality. However, in case there is not sufficient money to pay the interest and sinking funds on said bonds the corporate authorities of municipalities issuing said bonds shall levy annually a special levy to be used exclusively in paying the interest on each bond and bonds maturing within the year providing a sinking fund for the redemption of the bonds issued. However, such tax levy shall not be made by municipalities to pay bonds, nor the interest thereon, issued under Article 7 of this chapter.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

HISTORY: Codes, 1942, § 7571; Laws, 1932, ch. 269; Laws, 1935, ch. 66; Laws, 1983, ch. 494, § 28, eff from and after passage (approved April 11, 1983).

Cross References — Details of certain municipal or county bonds for harbor purposes, see § 59-7-311.

Power of municipality to establish sinking fund, see § 59-7-427.

Sinking fund for joint county and municipal bond issue, see § 59-9-59.

§ 59-7-15. Conduct of bond issue election generally.

Before issuing the bonds authorized by Section 59-7-11, the corporate authorities shall by resolution spread upon the minutes, declare their intention of issuing said bonds, fixing in said resolution the maximum amount thereof, and the purpose for which they are issued and where an election is required shall fix in such resolution a date upon which an election shall be held in said municipality, of which not less than three weeks notice shall be given by the clerk by a notice published in a newspaper published in said municipality once a week for three weeks preceding said election at three public places in said municipality. Such election shall be held as far as practicable, as other elections are held in municipalities.

HISTORY: Codes, 1942, § 7572; Laws, 1932, ch. 269.

Cross References — Municipal elections generally, see Miss Const § 245.

Details of issuance of bonds approved by election required by this section, see § 59-7-19.

§ 59-7-17. Qualifications of electors; form and marking of ballots; issuance of bonds without election.

At an election required by Section 59-7-15, all qualified electors of said municipality may vote, and the ballots used shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words, "For the bond issue," and the words, "Against the bond issue," and the voter shall vote by placing a cross (X) opposite his choice of the proposition. In cities of less than twelve thousand inhabitants, when the amount to be issued is not more than thirty thousand dollars the corporate authorities shall publish the resolution in some newspaper published in the county for three full consecutive weeks as herein provided, declaring their intention to issue said bonds, giving the day and date upon which said bonds are to be issued and if twenty per cent of the qualified electors of the municipality file a written protest against the issuance of said bonds, on or before said date, then an election shall be had as herein provided, and if no protest shall be filed, said bonds shall be issued without an election.

HISTORY: Codes, 1942, § 7573; Laws, 1932, ch. 269.

Cross References — Details of bonds issued pursuant to the authority of this section, see § 59-7-19.

§ 59-7-19. Issuance of bonds; maturities, interest, and execution; payment of principal and interest on bonds.

Should the election provided for in Sections 59-7-15 and 59-7-17 result in favor of the issuance of the bonds, the corporate authorities may issue said bonds, either in whole or in part within one (1) year after the date of such election or within (1) year after final favorable determination of any litigation affecting such bonds, as may be deemed best, and should the bonds be issued by the municipalities without an election therefor as provided. All bonds shall mature annually, with all maturities not longer than twenty (20) years, with not less than one-fiftieth (1/50) of the total issue to mature each year during the first five (5) years of the life of said bonds, and not less than one-twenty-fifth (1/25) of the said total issue to mature annually during the succeeding ten-year period of the life of said bonds, and the remainder to be divided into approximately equal payments, one (1) payment to mature during each year of the remaining life of the bonds. Said bonds shall not bear a greater rate of interest than that allowed in Section 75-17-101, Mississippi Code of 1972, payable semiannually, the denomination and form and place of payment to be fixed in the ordinance of the corporate authorities issuing said bonds, and they shall be prepared and signed by the mayor and clerk of said municipality with the seal of the municipality affixed thereto, but the coupons may only bear a facsimile signature of such mayor and clerk. Such bonds when issued, shall constitute a lien on all the taxable property in such municipality and county and the corporate authorities shall annually levy a special tax on all such property sufficient to pay the principal and interest of such bonds as the same falls due, if there not be sufficient funds provided herein.

HISTORY: Codes, 1942, § 7574; Laws, 1932, ch. 269; Laws, 1981, ch. 462, § 15; Laws, 1982, ch. 434, § 28; Laws, 1983, ch. 541, § 36, eff from and after passage (approved April 25, 1983).

Cross References — Powers conferred in connection with issuance of bonds, see § 31-21-5.

Supplemental powers and authorities, see § 59-7-13.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

§ 59-7-21. Disposition of proceeds from bonds; penalty for diversion; guarantee of payment.

The proceeds of any bonds issued under the authority of this article shall be placed in the municipal treasury or depository, if there be one, as a special fund and shall be used for no other purpose than the purpose set forth in the original resolution of the corporate authorities of such municipality, and any officer diverting or assisting to divert any such funds to any other purpose than the purpose originally set forth in said resolution of the corporate authorities of said municipality shall be guilty of a misdemeanor and punishable accordingly, and shall be liable both personally and on his official bond for such diversion. Nothing in this article shall be construed as a guarantee on the part of the State of Mississippi to pay the interest or principal on any bonds issued under this article.

HISTORY: Codes, 1942, § 7575; Laws, 1932, ch. 269.

Cross References — Depositories for local governments, see §§ 27-105-301 et seq.

Diversion of bond proceeds for county port fund, see § 59-7-121.

ARTICLE 3.

SUPPLEMENTARY PROVISIONS.

Sec.

59-7-101. Nature and application of article.
59-7-103. Port fund; procedure for bringing county within provisions of article.
59-7-105. Issuance of bonds by board of supervisors.
59-7-107. Details of bonds; supplemental powers and authorizations as to bond issues.
59-7-109. Maturities of bonds; interest.
59-7-111. Levy of special tax for payment of principal and interest on bonds; port bonds interest and sinking fund.
59-7-113. Resolution of intention to issue bonds; bond issue election generally.
59-7-115. Notice of election on bond issue.
59-7-117. Conduct of election on issue of bonds; qualifications of electors; form and marking of ballots.
59-7-119. Duties of board of supervisors as to elections.
59-7-121. Disposition of proceeds of bond issues; penalties for diversion.
59-7-123. Transfer of proceeds of bond issue to port bonds interest and sinking fund.
59-7-125. Port commission; composition, dissolution, oath, bond, terms and quorum.
59-7-127. Meetings; officers.
59-7-129. Powers and duties of commission generally.
59-7-131. Recommendations by commission as to expenditure of funds.

§ 59-7-101. Nature and application of article.

This article is supplementary and in addition to Article 1 of this chapter, and shall not apply to any county or counties of the state already receiving two mills of the state ad valorem taxes for port or harbor purposes.

HISTORY: Codes, 1942, § 7576-16; Laws, 1954, Ex. Sess. ch. 28, § 16.

Cross References — Supplemental provisions applying to counties in which a flood control project has been authorized, see §§ 59-7-201 et seq.

Revenue bonds for port and harbor improvements issued by counties complying with this article, see §§ 59-7-501 et seq.

§ 59-7-103. Port fund; procedure for bringing county within provisions of article.

(1) In order to provide for the improvement, promotion, development, construction, maintenance and operation of harbors or ports in counties having or hereafter providing harbors or ports where wharf or terminal or other facilities exist for the handling of inbound or outbound waterborne cargo moving in interstate or foreign commerce and where there is maintained a channel, harbor or port with a depth of not less than nine (9) feet, there shall be and there is hereby created in each such county electing to exercise the provisions of this article a special fund to be known as the "port fund," into which payments shall be made as follows:

(a) The tax collector of each such county electing to come under this article shall deduct from all state ad valorem taxes collected by him a sum equal to the avails of a levy of two (2) mills on the dollar of the assessed valuation of taxable property within such county upon which state ad valorem taxes are levied and collected. The amount so deducted shall be set aside by the tax collector and shall by him be paid into the said port fund of such county. Such payments shall be continued as long as there remains unpaid and outstanding any bonded indebtedness created by the board of supervisors of such county as hereinafter provided.

(b) The board of supervisors of each such county electing to exercise the provisions of this article shall pay or cause to be paid into the aforesaid port fund a sum equal to one-fourth (¼) of the sum paid into said fund under subsection (a) above and such payments shall be continued as long as there remains unpaid and outstanding any bonded indebtedness created by such board of supervisors as hereinafter provided. Any such board of supervisors shall provide the sum herein required either by appropriation from any available funds of the county or by the levy, in addition to all other county taxes, of a tax of not more than two (2) mills on the dollar of the assessed valuation of taxable property within such county upon which taxes for the general county fund are levied and collected. In case of a special tax levy as herein authorized, the tax collector of each such county shall set aside the avails of such levy and shall pay the same directly into the port fund of such county.

(c) The port commission hereinafter provided for shall pay into the port fund all of the revenues of whatsoever nature which may be derived from or through the use of the harbor, port, wharf or terminal facilities under its jurisdiction as hereinafter provided.

(2) In order to come within the provisions of this article, the board of supervisors of any such county shall, by appropriate resolution spread upon its minutes, declare its intention so to do and shall annually provide for the necessary matching county funds. A certified copy of such resolution shall be filed with the tax collector of such county and shall constitute his authority to set aside the taxes hereinabove referred to and to pay the same into the aforesaid port fund.

Provided further, that any county in the State of Mississippi through which a river or other stream flows, and which stream is classed as navigable and maintained as such by any agency of the federal government, and wherein harbors, wharves, ports, terminals or other facilities exist or are proposed or established hereafter for the handling of inbound or outbound waterborne cargo moving in interstate or foreign commerce, and where there is maintained a channel, harbor or port of such depth necessary for said purposes, then in such event such county may come under the provisions of this article if and when its application to come under the provisions of this article is approved by the Mississippi Board of Economic Development, which board shall adjudicate and determine the feasibility of said project so applied for and whether or not it is economically feasible. Certified copies of the order of said board shall be filed with the auditor of public accounts and the tax collector of such county affected.

HISTORY: Codes, 1942, § 7576-01; Laws, 1954, Ex. Sess. ch. 28, § 1; Laws, 1958, ch. 583; Laws, 1962, ch. 390; Laws, 1968, ch. 361, § 12; Laws, 1984, ch. 488, § 253, eff from and after July 1, 1984.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 57-1-2 provides that the term "Board of Economic Development" shall mean the "Department of Economic and Community Development".

Cross References — Resolution declaring intention to issue bonds generally, see § 19-9-11.

County tax collectors, see §§ 27-1-1 et seq.

State ad valorem taxes generally, see §§ 27-31-1 et seq.

Exemption from ad valorem taxes of certain leases executed by port commissions, see § 59-5-31.

Use of ad valorem state taxes for port fund, see § 59-7-1.

Bond issue election, see § 59-7-113.

Authority of counties to withhold state tax for port fund, see § 59-7-303.

Authority of counties complying with this article to issue revenue bonds for port and harbor improvement, see § 59-7-501.

Right of county to receive state ad valorem tax for port improvement, see § 59-11-7.

§ 59-7-105. Issuance of bonds by board of supervisors.

To provide additional or supplemental funds for the aforesaid purposes, and in connection therewith to acquire and develop water, air and rail terminals, rail lines, and such other structures, facilities, lands, property or rights therein needful for the convenient use of the same in the aid of commerce, and land for industrial operations, including the establishment and development of industrial parks, as provided in Section 59-9-17 and related sections, the board of supervisors of any such county may issue bonds of such county in an amount not exceeding the principal sum of eleven million dollars ($11,000,000.00). No county shall issue bonds under the provisions of this article which will result in outstanding bonded indebtedness incurred under the provisions of this article in excess of eight million dollars ($8,000,000.00) unless and until the question of the issuance of such bonds shall have been submitted to and approved by a majority of the qualified electors of the county voting in an election called and held for the purpose of considering whether or not such bonds should be issued. The first six million dollars ($6,000,000.00) in aggregate original principal amount of bonds issued under authority of this article shall not be included in computing any present or future debt limit of such county under any present or future law.

HISTORY: Codes, 1942, § 7576-02; Laws, 1954, Ex. Sess. ch. 28, § 2; Laws, 1960, ch. 205; Laws, 1962, ch. 391; Laws, 1964, ch. 426; Laws, 1974, ch. 445; Laws, 1978, ch. 411, § 1; Laws, 1980, ch. 324, § 1; Laws, 1982, ch. 359; Laws, 1984, ch. 423, eff from and after passage (approved April 23, 1984).

Cross References — County bonds, see §§ 19-9-1 et seq.

County bond elections generally, see §§ 19-9-11 through 19-9-17.

Details of bonds, see §§ 31-21-5 and 59-7-107.

Maturities and interest rates of bonds issued under authority of this section, see § 59-7-109.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 72 et seq.

15A Am. Jur. Legal Forms 2d, Public Securities and Obligations §§ 214:16-214:18.

§ 59-7-107. Details of bonds; supplemental powers and authorizations as to bond issues.

All bonds authorized by Section 59-7-105 shall be negotiable instruments within the meaning of the Mississippi Uniform Commercial Code, shall be lithographed or engraved, and printed in two (2) or more colors, to prevent counterfeiting, shall be registered as issued, shall be numbered in a regular series from one (1) upward, and each bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, shall be payable to bearer, and the interest to accrue thereon shall be evidenced by proper coupons to be attached thereto. Such bonds shall be executed by the manual of facsimile signature of the president of the board of supervisors, or the vice president in the absence or disability of the president, and countersigned by the manual of facsimile signature of the clerk thereof, with the official seal of the county affixed thereto. At least one (1) signature on each bond shall be a manual signature, as specified in the issuing resolution. The coupons may bear only the facsimile signatures of such president, or vice president and clerk. All such bonds shall be sold at public sale as provided by law, and no such bonds shall be issued and sold for less than par and accrued interest, and not more than one (1) series of interest coupons shall be attached to any such bonds. All interest accruing on such bonds shall be payable semiannually, except that the first interest coupon attached to any such bond may represent interest for any period not exceeding one (1) year.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

HISTORY: Codes, 1942, § 7576-03; Laws, 1954, Ex. Sess. ch. 28, § 3; Laws, 1978, ch. 411, § 2; Laws, 1983, ch. 494, § 29; eff from and after passage (approved April 11, 1983).

Cross References — Details of municipal harbor bonds, see § 59-7-13.
Details of bonds issued for joint county and municipal harbor projects, see § 59-7-311.

§ 59-7-109. Maturities of bonds; interest.

All bonds authorized by Section 59-7-105 shall mature annually, with all maturities not longer than twenty (20) years, with not less than one-fiftieth (1⁄50) of the total issue to mature each year during the first five (5) years of the life of such bonds, not less than one-twenty-fifth (1⁄25) of the total issue to mature each year during the succeeding ten-year period of the life of such bonds, and the remainder to be divided into approximately equal annual payments, one (1) payment to mature each year for the remaining life of such bonds. Such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101, Mississippi Code of 1972. The denomination, form and place or places of payment of such bonds shall be fixed in the resolution or order of the board of supervisors issuing such bonds.

No interest payment shall be evidenced by more than one (1) coupon, and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than sixty percent (60%) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) interest coupon shall not exceed the maximum interest rate allowed on such bonds.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (1⁄8 of 1%) or in multiples of one-tenth of one percent (1⁄10 of 1%), and a zero rate of interest cannot be named.

HISTORY: Codes, 1942, § 7576-04; Laws, 1954, Ex. Sess. ch. 28, § 4; Laws, 1970, ch. 408, § 1; Laws, 1976, ch. 443; Laws, 1978, ch. 411, § 3; Laws, 1980, ch. 324, § 2; Laws, 1981, ch. 462, § 16; Laws, 1982, ch. 434, § 29; Laws, 1983, ch. 541, § 37, eff from and after passage (approved April 25, 1983).

Cross References — Additional powers conferred in connection with issuance of bonds generally, see § 31-21-5.

Supplemental powers and authorities, see § 59-7-107.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 154 et seq., 351 et seq.

§ 59-7-111. Levy of special tax for payment of principal and interest on bonds; port bonds interest and sinking fund.

The board of supervisors of any county which shall have issued bonds under the provisions of this article shall, unless there be sufficient funds otherwise available therefor in the port bonds interest and sinking fund, annually levy a special tax upon all of the taxable property within such county at a rate which shall be sufficient to provide for the payment of the principal of and the interest on such bonds according to the terms thereof. All taxes thus collected shall be credited to a special fund in the county treasury of such county to be known and designated as the "port bonds interest and sinking fund," and all sums credited to said fund shall be used to pay such bonds as they mature and the interest thereon as it accrues, and for no other purpose. It shall be the mandatory duty of such board of supervisors to transfer funds from said port fund to the port bonds interest and sinking fund in amounts sufficient to pay maturing principal and accruing interest on bonds issued hereunder, if balances standing to the credit of said port fund are sufficient for that purpose. To the extent that funds are thus made available for the payment of such bonds and the interest thereon, the special tax levy hereinabove provided for may be correspondingly reduced. The said bonds nevertheless shall be general obligations of the county issuing the same, and the full faith, credit and resources of such county shall be pledged to the payment thereof and the interest thereon.

HISTORY: Codes, 1942, § 7576-05; Laws, 1954, Ex. Sess. ch. 28, § 5.

Cross References — Levy of special tax by municipal authorities to provide sinking fund for redemption of bonds, see § 59-3-5.

Sinking fund for municipal harbor bonds, see § 59-7-15.

Provision that the port fund shall be subject to expenditure by the port commission except as provided in this section, see § 59-7-131.

Power of municipality to establish sinking fund, see § 59-7-427.

Sinking fund for joint municipal and county harbors, see § 59-9-59.

§ 59-7-113. Resolution of intention to issue bonds; bond issue election generally.

Before issuing any bonds for any of the purposes herein enumerated, the board of supervisors shall adopt a resolution declaring its intention so to do, stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and the date upon which the board proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three consecutive weeks in at least one newspaper published in such county. The first publication of such resolution shall be made not less than twenty-one days prior to the date fixed in such resolution for the issuance of the bonds, and the last publication shall be made not more than seven days prior to such date. If no newspaper be published in such county, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such resolution for at least twenty-one days next preceding the date fixed therein at three public places in such county. If twenty per cent (20%) of the qualified electors of the county shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as is herein provided. If no such protest be filed, then such bonds may be issued without an election on the question of the issuance thereof, at any time within a period of two years after the date specified in the above-mentioned resolution. However, the board of supervisors, in its discretion, may nevertheless call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to issue such bonds as herein provided.

HISTORY: Codes, 1942, § 7576-06; Laws, 1954, Ex. Sess. ch. 28, § 6.

Cross References — Resolution declaring intention to issue county bonds, see §§ 19-9-11, 59-7-103.

§ 59-7-115. Notice of election on bond issue.

Where an election is to be called, as provided in Section 59-7-113, notice of such election shall be signed by the clerk of the board of supervisors and shall be published once a week for at least three consecutive weeks, in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one days prior to the date fixed for such election and the last publication shall be made not more than seven days prior to such date. If no newspaper is published in such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county, and, in addition, by posting a copy of such notice for at least twenty-one days next preceding such election at three public places in such county.

HISTORY: Codes, 1942, § 7576-07; Laws, 1954, Ex. Sess. ch. 28, § 7.

Cross References — Elections on question of county bond issues generally, see §§ 19-9-11 et seq.

§ 59-7-117. Conduct of election on issue of bonds; qualifications of electors; form and marking of ballots.

The election provided for in Sections 59-7-113 and 59-7-115 shall be held, as far as is practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of such county may vote, and the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE," and the voter shall vote by placing a cross (x) or check mark (√) opposite his choice on the proposition.

HISTORY: Codes, 1942, § 7576-08; Laws, 1954, Ex. Sess. ch. 28, § 8.

§ 59-7-119. Duties of board of supervisors as to elections.

When the results of the election on the question of the issuance of bonds under the provisions of this article shall have been canvassed by the election commissioners of such county and certified by them to the board of supervisors of such county, it shall be the duty of such board of supervisors to determine and adjudicate whether or not three-fifths (3/5ths) of the qualified electors who voted in such election voted in favor of the issuance of such bonds and, unless three-fifths (3/5ths) of the qualified electors who voted in such election shall have voted in favor of the issuance of such bonds, then such bonds shall not be issued. Should three-fifths (3/5ths) of the qualified electors who vote in such election vote in favor of the issuance of such bonds, then the board of supervisors of the county may issue such bonds, either in whole or in part, within two years from the date of such election, or within two years after the final favorable termination of any litigation affecting the issuance of such bonds, as such board shall deem best.

HISTORY: Codes, 1942, § 7576-09; Laws, 1954, Ex. Sess. ch. 28, § 9.

§ 59-7-121. Disposition of proceeds of bond issues; penalties for diversion.

The proceeds of any bonds issued by any county pursuant to the provisions of this article shall be placed in the county treasury or depository, if there be one, in a special fund and shall be expended by the board of supervisors of such county for the purpose or purposes for which the bonds were authorized to be issued, and for no other. If the board of supervisors of any such county or any member thereof or any other officer shall willfully divert or aid or assist in diverting any such fund, or any part thereof, to any purpose other than that for which such bonds were authorized to be issued, such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for a term not exceeding five years and, in addition, shall be liable personally on his official bond for the amount so diverted. Any member of such board of supervisors may escape the penalty herein provided for by having his vote recorded in the negative on any illegal diversion of the proceeds of such bonds.

HISTORY: Codes, 1942, § 7576-10; Laws, 1954, Ex. Sess. ch. 28, § 10.

Cross References — Diversion of county bond proceeds by board of supervisors generally, see § 19-9-21.

Depositories for local governments, see §§ 27-105-301 et seq.

Diversion of municipal bond proceeds, see § 59-7-21.

§ 59-7-123. Transfer of proceeds of bond issue to port bonds interest and sinking fund.

Whenever a balance shall remain in the proceeds of any bond issue after the purpose for which such bonds were issued shall have been accomplished, such balance shall forthwith be transferred to the port bonds interest and sinking fund hereinabove provided for.

HISTORY: Codes, 1942, § 7576-11; Laws, 1954, Ex. Sess. ch. 28, § 11.

Cross References — Power of municipality to provide sinking fund for bonds issued for ports of entry, see § 59-3-5.

Sinking fund for municipal bonds, see § 59-7-13.

Power of municipality to provide for sinking funds, see § 59-7-427.

Sinking fund for joint bond issue by county port authority and municipality, see § 59-9-59.

§ 59-7-125. Port commission; composition, dissolution, oath, bond, terms and quorum.

(1) All improvements constructed by the board of supervisors under the provisions of this article shall be operated and maintained by a port commission composed of five (5) residents of such county who shall be qualified electors therein. Such commission shall have jurisdiction over the port, terminals, harbors and passes leading thereto, and all vessels, boats and wharves, common carriers, and public utilities therein, using the same, within their respective counties. Such port commission shall be appointed as follows: one (1) member shall be appointed by the Governor, two (2) shall be appointed by the board of supervisors of the county, and two (2) shall be appointed by the governing body of the municipality which is the county seat of such county in such cases where the county seat of such county is situate on or adjacent to such port facilities, otherwise, four (4) members shall be appointed by the board of supervisors. A county and a municipality may by joint resolution dissolve a port commission created under this section which is governed by a commission with two (2) commissioners appointed by each. The joint resolution must provide that the municipality relinquishes its duties and obligations related to the port, and that the county assumes all duties and obligations related to the port. Any commission so dissolved shall be reconstituted to consist of five (5) members, one (1) member appointed from each supervisor

district. The board of supervisors shall provide for staggered terms in its order providing for the appointment of the reconstituted port commission. Before entering upon the duties of the office, each of such commissioners shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi, and shall give bond, to be approved by the board of supervisors, in the sum of Five Thousand Dollars ($5,000.00), conditioned upon the faithful performance of their duties. Such bond shall be made payable to the county and in case of breach thereof, suit may be brought on the relation of the county for the benefit of such port commission. Such commissioners shall hold office for a term of four (4) years from the date of their appointment and qualification and until their successor or successors shall be appointed and qualified as set out herein. Three (3) members of the port commission shall be necessary to constitute a quorum for the conducting of business.

(2) The members of the board of supervisors shall be ex officio members of the port commission, but no bond shall be required of them in such capacity; provided, however, the members of the board of supervisors shall be nonvoting members of the port commission and shall not be included or counted for the determination of a quorum for conducting of business by the port commission unless and until the board of supervisors of a particular county, by order entered on its minutes, expressly provides that the members of the board of supervisors shall be voting members of the port commission and the number of members required for a quorum to conduct business of the port commission, but in no event shall the number required for a quorum to conduct business of the port commission be less than three (3).

(3) All actions heretofore taken by the various port commissions at which at least three (3) members were present and which would otherwise have been legal actions except for the absence of a legal quorum being present and voting are hereby ratified, confirmed and approved.

HISTORY: Codes, 1942, § 7576-12; Laws, 1954, Ex. Sess. ch. 28, § 12; Laws, 1976, ch. 448; Laws, 1998, ch. 365, § 1, eff from and after passage (approved March 16, 1998).

Cross References — Who may administer oaths, see §§ 11-1-1, 25-1-9.
Creation of harbor commission, see § 59-1-1.
Bonds of port commission, see § 59-1-3.
Control of port commission over county and municipal harbors, see § 59-7-7.
Operation of county and municipal harbors by port commission, see § 59-7-307.

§ 59-7-127. Meetings; officers.

When such port commissioners provided for in Section 59-7-125 shall have been appointed and shall have been qualified as set out herein, they shall meet at the regular meeting place of the board of supervisors of such county, after giving at least five days' notice of the time and place of such meeting by publication in a newspaper published at the county seat of such county. At such meeting they shall elect a president and a secretary who shall be members of the commission, and adopt such rules as may govern the time and place for holding meetings, regular and special, not inconsistent with the provisions of this article.

HISTORY: Codes, 1942, § 7576-13; Laws, 1954, Ex. Sess. ch. 28, § 13.

Cross References — Meetings of port commissioners, see §§ 59-1-5, 59-1-7, 59-7-409.

§ 59-7-129. Powers and duties of commission generally.

The duties and powers of such port commission provided for in Section 59-7-125 shall be the same as those which are set forth and prescribed in Sections 59-1-9 and 59-1-27, except that the salary of the port director shall be subject to the approval of the board of supervisors.

HISTORY: Codes, 1942, § 7576-14; Laws, 1954, Ex. Sess. ch. 28, § 14.

Cross References — Additional duties and powers of port commission, see § 59-7-205.

§ 59-7-131. Recommendations by commission as to expenditure of funds.

It shall be the duty of such port commission, from time to time, to make recommendations to the board of supervisors of such county concerning expenditures to be made for the improvement, promotion, development, construction, maintenance and operation of the harbor and port facilities of such county, and shall annually submit to such board of supervisors a proposed budget for the operation and maintenance of such harbor and port facilities, which recommendations and budget shall be subject to approval of the board of supervisors. Except as provided in Section 59-7-111, the port fund shall be subject to expenditure by the port commission.

The port commission may recommend to the Legislative Budget Office, the State Fiscal Management Board, and the county board of supervisors that certain excess funds in the port fund be transferred to any industrial development authority within the county. Upon approval by the State Fiscal Management Board and the county board of supervisors, the port commission may transfer such excess funds, or any portion thereof which may be designated by the State Fiscal Management Board and county board of supervisors, as provided herein.

The port commission in any county bordering the Mississippi River and having a population of more than fifty-one thousand (51,000) but less than fifty-two thousand (52,000) according to the 1980 federal census may recommend to the board of supervisors the expenditure of excess funds in the port fund for the acquisition of lands in the county to be used for industrial development purposes. Upon the acquisition of such lands, excess funds in the port fund may also be expended to provide necessary utilities and other improvements the board of supervisors deems necessary and requisite for industrial development. Any lands acquired hereunder shall be titled in the name of the county.

For the purposes of this section, the term "excess funds" means monies determined to be in excess of those necessary to fund the budget for the fiscal year.

HISTORY: Codes, 1942, § 7576-15; Laws, 1954, Ex. Sess. ch. 28, § 15; Laws, 1983, ch. 532; Laws, 1984, ch. 488, § 254; Laws, 1986, ch. 323, eff from and after passage (approved March 13, 1986).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the third paragraph. The word "aquisition" was changed to "acquisition" in two places. The Joint Committee ratified the corrections at its December 3, 1996 meeting.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References — Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Submission of budget requests to legislative budget office, see § 27-103-127.

Creation of interest and sinking fund, see § 59-7-111.

OPINIONS OF THE ATTORNEY GENERAL

A port commission possesses the power to employ or contract for personnel and consulting services to assist it in the performance of its responsibility, and if the commission finds, consistent with fact, that a planning consultant will assist the commission in accomplishing its lawful duty, the commission may employ such consultant. Varner, June 3, 1992, A.G. Op. #92-0362.

A Port Commission possesses the power to employ or contract for personnel and consulting services to assist it in the performance of its responsibility. Moss, Feb. 27, 2004, A.G. Op. 04-0050.

ARTICLE 5.

SUPPLEMENTAL AND ADDITIONAL POWERS.

Sec.	
59-7-201.	Application and construction of article.
59-7-203.	Acquisition of lands after giving of assurances required by federal authorities.
59-7-205.	General duties and powers of port commission.
59-7-207.	Operation of port facilities; employment of personnel.
59-7-209.	Delegation of additional duties, powers and rights to commission; approval of acts and expenditures of commission; liability of commissioners and counties.
59-7-211.	Sale, lease or conveyance of lands or easements.
59-7-213.	Maintenance of records by commission; public inspection of records.

§ 59-7-201. Application and construction of article.

This article shall be applicable to all counties electing to come under the terms and provisions of Article 3 of this chapter and in which a flood control project has been authorized or may be authorized by the federal government which either directly or indirectly involves, or has the result of creating, a potential industrial area or the protection of such an area. This article is supplementary to said Article 3 of this chapter, and all other laws of this state concerning ports and harbors and shall not be construed by way of limitation on any of the powers or authority heretofore granted, but the authority conferred herein is in addition and cumulative thereto.

HISTORY: Codes, 1942, § 7576-21; Laws, 1956, ch. 183, § 1.

§ 59-7-203. Acquisition of lands after giving of assurances required by federal authorities.

Where any county in connection with any such flood control project has given or may give assurances of local cooperation required by the federal authorities, as authorized by law, the board of supervisors of such county shall have the added power and authority, if necessary or desirable for the fulfillment of such assurances, to acquire all lands and easements and rights-of-way, and the fee title to such lands where advisable, either by purchase or by condemnation and, if by condemnation, according to the existing statutes applicable to the acquisition by counties of property for public use.

Where any county of the state which operates any such project has been required to give its assurances by the federal authorities or other agency of the government of the United States of local cooperation and participation in any such project by agreeing to pay any part of the construction costs of such project or projects, then the board of supervisors of such county shall have the added power and authority, if necessary and desirable for the fulfillment of such assurances, to sign agreements with such federal authorities or other agency of the government of the United States whereby such participating county agrees to pay its part of the cost of such construction or any fractional part thereof, including interest of not more than three per cent (3%) per annum, and provided further that said assurances shall be due and payable within the primary term of forty years from the time such assurances are given.

HISTORY: Codes, 1942, § 7576-22; Laws, 1956, ch. 183, § 2; Laws, 1962, ch. 392, § 1, eff from and after passage (approved May 22, 1962).

Cross References — Flood control agreements with United States, see §§ 51-35-1 et seq.

Assurances given to federal authorities in relation to flood control projects, see §§ 51-35-15, 51-35-17.

§ 59-7-205. General duties and powers of port commission.

(1) In any county where a port commission has been established or may be established and where the board of supervisors of said county directs that said commission undertake, on behalf of such county, jurisdiction over and duties in

connection with the fulfillment of the assurances of local cooperation and handling of the harbor project upon which construction may be done by the federal government, as contemplated by Section 59-7-201, and where either all or over half of the lands and properties involved in said project are beyond the confines of any municipality lying within said county, then the board of supervisors of said county shall appoint four (4) members of said port commission in accordance with the terms and provisions of Section 59-7-125, and, where such port commission has been established or may be established in such instance, then said port commission shall undertake and perform the duties assigned to it by said board, as hereby authorized, and said commissions shall, in addition, manage and control all port facilities which may be authorized and constructed by virtue of the terms and provisions of Article 3 of this chapter, and all appurtenant and physical properties connected therewith, both real and personal, and shall provide for the regular inspection, repair, maintenance and improvement of said port facilitates. Said port commission, in the performance of its duties, may make any contract and authorize any purchases from any funds on hand in the port fund of any such county, which said contracts and purchases shall be made in accordance with Section 31-7-1 et seq. Said contracts and purchases shall include all contracts and purchases incidental to or necessary for the proper establishment, insurance, maintenance, repair, improvement and operation of said port facilities, including, if indicated for their protection, workmen's compensation insurance for the benefit of any employees of said port commission.

Any such port commission is further authorized and empowered, in its discretion, to own and operate any or all dock, terminal, warehouse or railroad facilities which may by it be deemed necessary or desirable to promote the development of any port or industrial facilities under its control or supervision and to such end such port commission is authorized and empowered to acquire by purchase, construction or lease any buildings, structure or equipment, to employ any personnel or technical assistance, to enter into any contracts with any persons, firms or corporations, and to establish, charge and collect any tariffs, rates or other charges in connection therewith, as may be deemed necessary or advisable to accomplish such purposes. Said port commission is likewise authorized and empowered to operate such dock, terminal, warehouse or railroad facilities through agents or lessees by such contractual or lease agreements as may be entered into by said port commission upon such terms and conditions as said commission may deem proper. The authority granted hereby shall extend only to the lands under the control and supervision of said port commission.

(2) The powers and authority granted by this section are supplemental to all other powers and authority granted to said port commission and the same shall in nowise be construed to limit any such powers and authority heretofore granted.

HISTORY: Codes, 1942, § 7576-23; Laws, 1956, ch. 183, § 3; Laws, 1963, 1st Ex. Sess. ch. 31, §§ 1-3; Laws, 1980, ch. 440, § 24, eff from and after January 1, 1981.

Editor's Notes — Section 71-3-1 provides that the term "workmen's compensation" shall mean "workers' compensation".

Cross References — Cooperation of port authorities with counties and municipalities, see § 57-1-49.

Duties and powers of port commission, see §§ 59-1-9, 59-7-129, 59-7-209.

OPINIONS OF THE ATTORNEY GENERAL

County port commission has the authority to enter into a lease agreement with a private corporation for port operations in accordance with the requirements set forth in the applicable statutes. Smith, June 19, 2003, A.G. Op. 03-0236.

County port commission may enter into a lease agreement without going through a bidding process, as there is no statutory requirement for a bid process found in Section 59-7-205. Smith, June 19, 2003, A.G. Op. 03-0236.

Section 59-7-205 gives broad discretion as to the lease price; however, while this does not mean fair market value is required under this code section, the sale must still be made for good and valuable consideration and not be such as would constitute donation or gratuity. Smith, June 19, 2003, A.G. Op. 03-0236.

§ 59-7-207. Operation of port facilities; employment of personnel.

The commission referred to in Section 59-7-205 may establish and operate said port facilities on such plan as it may determine upon, including the right to employ, or delegate to the port director the employment of such engineering and legal assistants and such subordinate personnel as the commission may deem necessary, to provide for the wages and compensation of the port director and all other employees; and, in their discretion, to require that the port director and such other subordinate personnel as may be deemed necessary and desirable post a bond written by a surety company or companies authorized to do business in the State of Mississippi in such amount as the commission may designate, conditioned on the faithful discharge of all of their duties as such employees, the premiums on such bonds to be paid from said port fund in the discretion of the commission.

HISTORY: Codes, 1942, § 7576-24; Laws, 1956, ch. 183, § 4.

Cross References — Workers' compensation insurance generally, see §§ 71-3-1 et seq.

§ 59-7-209. Delegation of additional duties, powers and rights to commission; approval of acts and expenditures of commission; liability of commissioners and counties.

The board of supervisors of any such county described in Section 59-7-201 may prescribe such further duties, powers and rights of such commission as may be within the authority of such board to delegate and provide for the reasonable compensation, if any, of the chairman and members of the commission, and shall provide that the acts of such commissioners shall regularly, and not less than quarterly or more than monthly, be reported to said board and be subject to its approval and concurrence by order spread upon the minutes of said board generally approving such reports and minutes. The obligations incurred and the expenditures authorized to be made by said commission shall in the manner herein set forth be subject to the approval of the board of supervisors of said county; and when and should the board decline to grant its approval of any act of said commission, it shall signify its reason for withholding that approval on the minutes of said board. All expenditures so authorized and provided for shall be made upon special port commission warrants to be countersigned by the clerk of said board. There shall be no personal obligation or liability on the part of any member of said commission except for a wilful wrong, nor shall there be any general obligation or liability on said county other than from the revenues derived from the operation of said port and revenues allocated by law to the aforesaid port fund of said county, except for the obligation of a condemnation award or for any such obligation which may be provided for in any trust indenture or resolution under which bonds are issued under the terms and provisions of Article 3 of this chapter.

HISTORY: Codes, 1942, § 7576-26; Laws, 1956, ch. 183, § 6.

Cross References — Punishment of public officers for neglect of duty or misdemeanor in office, see Miss. Const. Art. 6, § 175.

Removal of public officers from office for misconduct or misdemeanor in office, see § 25-5-1.

JUDICIAL DECISIONS

1. In general.

Where the statute required the approval of the county board of supervisors of construction contracts entered into by a county port commission, neither the port commission nor the county would be liable for the payment of the cost of contract changes and additions which had not been approved by the supervisors in the manner required by law. Warren County Port Com. v. Farrell Constr. Co., 395 F.2d 901, 1968 U.S. App. LEXIS 6674 (5th Cir. Miss. 1968).

§ 59-7-211. Sale, lease or conveyance of lands or easements.

In all such counties, described in Section 59-7-201, upon and with the approval of the board of supervisors, the port commission shall have the power and authority to sell or lease any lands or easements acquired by any such county in conjunction with the establishment and construction of any port or harbor under the jurisdiction of said commission for the purposes of industrial development, but the terms and provisions of any such sales or lease shall include limitations as to the use of such lands and easements for industrial activities integrated to water transportation in accordance with the terms and provisions of such assurances of local cooperation as may have been given by virtue of Section 51-35-15 or Section 51-35-17, Mississippi Code of 1972, and the provisions of this article. Furthermore, said port commission, upon and with the approval of the board of supervisors, shall have the power and is hereby authorized, in its discretion, to sell and convey to the United States of

America, without any limitations whatsoever, by general or special warranty deed or other acceptable form or conveyance, the full title to any lands acquired or held by any such county in connection with the establishment and development of any harbor or port project under the jurisdiction of said commission in exchange for the title to lands of the United States of America deemed useful for or needed by any county in connection with the establishment, enlargement, development, construction or maintenance of any port or harbor project under the jurisdiction of said commission, or for such other consideration as said commission and said board find to be adequate and sufficient. Said port commission, upon and with the approval of the board of supervisors of the county, is further hereby authorized to donate and/or sell and convey, without any limitations, upon such terms and conditions as may be deemed proper by the said commission and said board of supervisors, to the United States of America any of the lands needed by the United States of America for navigation and/or flood control purposes, or in fulfillment of any authorized assurances which have been given or which may be given by said county to the United States of America, or for the purpose of the display of the Gunboat Cairo.

HISTORY: Codes, 1942, § 7576-27; Laws, 1956, ch. 183, § 7; Laws, 1964, ch. 467; Laws, 1966, ch. 275, § 4, eff from and after passage (approved June 16, 1966).

Cross References — Flood control agreements with the United States, see §§ 51-35-1 et seq.

Industrial research and development generally, see §§ 57-1-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Section 59-7-211 does not contemplate sale or lease of property owned by county through port commission which has ceased to be used by both county and port commission; board of supervisors upon finding by port commission that property is not needed for port commission purposes, and at request of port commission, may authorize sale of property that has ceased to be used for any county or port commission purpose pursuant to Section 19-7-3. Cox, March 23, 1994, A.G. Op. #94-0174.

§ 59-7-213. Maintenance of records by commission; public inspection of records.

The port commission shall keep regular minutes of all its official actions and shall provide for an adequate bookkeeping system and regular audits and keep or cause to be kept full and correct records of the finances of said port commission and shall, from said port funds, provide for, and pay to the clerk of said board fees and sums as are found to be proper and reasonable for the extra duties and work hereby imposed upon him. All such minutes, books and records shall be kept in the office of the chancery clerk of the county in which the port is located or in such other place as the board of supervisors may designate by order spread upon their minutes to the end that such minutes, books and records shall, under reasonable conditions, be available at all times to the public for inspection.

HISTORY: Codes, 1942, § 7576-25; Laws, 1956, ch. 183, § 5.

ARTICLE 7.

CUMULATIVE PROVISIONS.

Sec.
59-7-301. Construction and effect of article.
59-7-303. Levy of ad valorem tax in certain counties; disposition of proceeds of tax.
59-7-305. Powers of municipal authorities as to promotion, development, etc., of harbors or seaports.
59-7-307. Maintenance and operation of improvements and facilities by port commission; collection, etc., of rents, fees, etc.; disposition of revenues; annual reports.
59-7-309. Authorization of issuance of bonds by municipalities; audit and inspection of accounts.
59-7-311. Exercise of authority for issuance of bonds; form, terms and conditions of bonds; execution of bonds; negotiability and sale of bonds; disposition of proceeds of sale; payment of principal and interests on bonds.
59-7-313. Disposition of proceeds of bonds; penalties for diversion; guarantee of payment.
59-7-315. Mortgage or deed of trust securing bonds.
59-7-317. Applicability of municipal debt limitations to bond issues; funds from which bonds payable.
59-7-319. Exemption from taxation of bonds.
59-7-321. Powers of municipality with respect to issuance of bonds.
59-7-323. Trustees.

§ 59-7-301. Construction and effect of article.

This article, as to the subject matters hereof, shall supersede all other laws, general, special or local, including charters of municipalities. Any municipality issuing bonds or other obligations pursuant to this article shall have no power thereafter to issue bonds or other obligations pursuant to the provisions of Article 1 of this chapter, unless and until all bonds or other obligations issued pursuant to this article, and interest thereon, have been fully paid and discharged.

HISTORY: Codes, 1942, § 7589; Laws, 1934, ch. 209.

§ 59-7-303. Levy of ad valorem tax in certain counties; disposition of proceeds of tax.

An ad valorem tax of two mills on each one dollar of the total assessed valuation of all the taxable property in each county or counties in the State of Mississippi, in which there is located a harbor or port of entry where commodities are exported to foreign nations, and where there is maintained a channel and/or harbor or port to a depth of not less than twenty feet, be, and the same is hereby, levied on all said taxable property, in or for each year in which the principal of or interest on any bonds or other obligations issued by any municipality pursuant to this article becomes due. The receipts from said two-mill tax shall be withheld by the tax collector of said county, and/or by any other tax collecting agency authorized by law for the collection of said taxes, from receipts from state ad valorem taxes now in effect or which may be hereafter levied, so long as the state ad valorem taxes shall be not less than the two-mill tax herein levied. However, if no state ad valorem taxes equal to or greater than the said two-mill tax herein levied is now or shall be hereafter levied, then and in that event, the said two-mill tax herein levied shall continue to be levied and collected as herein provided in each such county or counties in or for each year in which the principal of or interest on any bonds or other obligations issued by any municipality pursuant to this article becomes due. The tax collector, and/or any other tax collecting agency authorized by law for the collection of said taxes, shall pay over all moneys collected or to be collected as receipts from said two-mill tax to any trustee or successor thereto established as hereinafter in this article provided, and in the event that there is no such trustee, then said tax collector, and/or any other tax collecting agency authorized by law for collection of said taxes, shall pay over all such moneys into the county depository of each such county to the credit of a fund which shall be known as a port fund. Any such moneys so paid into the county depository of each such county to the credit of said port fund may be expended at the direction of the port commission, appointed for any port of entry as designated in Chapter 1 of this title. But in no county within the terms of this article shall there be withheld from the state treasury under the provisions of this article and Article 1 of this chapter, for any one year an amount in excess of the receipts from said two-mill tax. The provisions of this article shall be deemed to be a contract with the holders of any bonds or other obligations issued pursuant to this article.

HISTORY: Codes, 1942, § 7577; Laws, 1934, ch. 209.

Cross References — County tax collectors, see §§ 27-1-1 et seq.
Ad valorem taxes generally, see §§ 27-29-1 et seq.

§ 59-7-305. Powers of municipal authorities as to promotion, development, etc., of harbors or seaports.

The authorities of any municipality in which there is situated and located, in whole or in part, a port of entry through which commodities are imported and exported to foreign nations, which maintains a channel and/or harbor to a depth of not less than twenty feet, are hereby given the authority to engage in, either directly or through the commission hereinafter provided and designated and such other agencies as hereafter may be provided by law, work of internal improvement, or promoting, developing, constructing, maintaining, and operating harbors or seaports within the state and its jurisdiction, and either directly or through the commission hereinafter provided for, shall have the power to acquire, purchase, install, rent, lease, mortgage, and/or otherwise encumber, to construct, own, hold, maintain, equip, use, control and operate at seaports, wharves, piers, docks, quays, grain elevators, cotton compresses, warehouses, floating dry docks, graving docks, marine railways, tugboats, cold storage facilities and other water and rail terminals and other structures, and facilities needful for the convenient use of the same in the aid of commerce including the dredging of approaches thereto.

HISTORY: Codes, 1942, § 7578; Laws, 1934, ch. 209; Laws, 1960, ch. 435.

Cross References — Municipal harbor improvements generally, see § 59-7-5.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 76 et seq.

§ 59-7-307. Maintenance and operation of improvements and facilities by port commission; collection, etc., of rents, fees, etc.; disposition of revenues; annual reports.

All improvements and facilities constructed pursuant to Article 1 of this chapter, and/or constructed pursuant to this article, shall be maintained and operated under the control of the port commission as provided in chapter 1 of this title. The said port commission shall, subject to and in accordance with any agreement or agreements as may be made by any such municipality with the purchaser or purchasers of bonds or other obligations issued pursuant to this article, prescribe, levy and collect all rents, fees, tolls, revenues, and/or other charges in connection with the use and occupancy of the aforesaid improvements and facilities, and shall pay over all net revenues derived from the operation of said improvements and facilities to any trustee, or successor thereto, established as hereinafter in this article provided. Net revenues shall be deemed to be such as may be defined in any agreement or agreements entered into between any such municipality and the purchaser or purchasers of any bonds or other obligations issued pursuant to this article. The said port commission shall make an annual report to the governor of the State of Mississippi, to the municipality having such port of entry, and to the state legislature.

HISTORY: Codes, 1942, § 7579; Laws, 1934, ch. 209; Laws, 1970, ch. 409, § 1, eff from and after July 1, 1970.

Cross References — Control by port commission generally, see § 59-7-7.
Powers and duties of county port authorities, see § 59-9-15.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 76 et seq.

§ 59-7-309. Authorization of issuance of bonds by municipalities; audit and inspection of accounts.

Any municipality, in which there is situated and located in whole or in part a port of entry through which commodities are imported or exported as aforesaid, is hereby given authority, upon the adoption of a resolution to such effect, to issue bonds or other obligations for any or all of the purposes as provided in this article. The books of account and other sources of information pertaining to duties under the provisions of this article, of any port commission, municipality and/or county affected by this article, shall be and remain at all times open to inspection and subject to audit by the holder or holders of any bonds or other obligations issued pursuant to this article.

HISTORY: Codes, 1942, § 7581; Laws, 1934, ch. 209.

Cross References — Authority of municipalities to issue bonds, see § 59-7-11. Authority of county to issue bonds, see § 59-9-37.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 72 et seq.

§ 59-7-311. Exercise of authority for issuance of bonds; form, terms and conditions of bonds; execution of bonds; negotiability and sale of bonds; disposition of proceeds of sale; payment of principal and interests on bonds.

The power to issue bonds or other obligations authorized by this article and Section 59-5-31, shall be vested in and may be exercised from time to time by the governing bodies of any municipality or county so authorized in such laws.

Such revenue bonds may be issued without an election upon the adoption of a resolution of the board of supervisors of such county, declaring its intention to issue such bonds, and shall not be subject to any limitation as to amount, and shall not be included or computed in the statutory limitation of indebtedness of any such county. Such bonds shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, be payable at such place or places within or without the State of Mississippi, shall mature at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the board of supervisors of such county.

Such bonds shall mature in annual installments beginning not more than five years from date thereof and extending not more than thirty-five years from date thereof. Such bonds shall be signed by the president of the board of supervisors of such county, and the official seal of the county shall be affixed thereto, attested by the clerk of the board of supervisors of such county. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

All bonds and interest coupons issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Mississippi Uniform Commercial Code. Such bonds and income therefrom shall be exempt from all taxation within the State of Mississippi.

The board of supervisors of such county shall sell such bonds in such manner and for such price as it may determine to be for the best interest of said county, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. Notice of the sale of any such bonds shall be published at least one time not less than ten days prior to the date of sale and shall be published in a newspaper published in and having general circulation within the county.

The proceeds of such bonds shall be paid into a special fund or funds in banks qualified to act as depositories for such county. The proceeds of such bonds shall be solely for the purposes for which they were issued, and the redeeming of any outstanding bonds, and shall be disbursed upon the order of the board of supervisors of such county, with such restrictions, if any, as the resolution authorizing the issuance of the bonds may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the purpose for which they were issued, and the redeeming of any outstanding bonds, unless otherwise provided in the resolution authorizing the issuance of such bonds, additional bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution authorizing the issuance of bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which the bonds were issued, the surplus shall be paid into the fund established for the payment of the principal of and the interest on such bonds.

Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this article. The bonds authorized under the authority of this article may, in the discretion of the board of supervisors of such county, be validated in the chancery court of such county in the manner and with the force and effect provided by Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, for the validation of county, municipal, school district, and other bonds.

The revenue bonds issued under the provisions of this section shall be payable solely out of the revenues to accrue from the operation of such project, development, improvement or utility systems, and the full faith and credit of the county shall not be pledged therefor, nor shall any ad valorem tax be levied therefor.

HISTORY: Codes, 1942, § 7585; Laws, 1934, ch. 209; Laws, 1938, Ex. ch. 49; Laws, 1960, ch. 436; Laws, 1962, ch. 395, § 2, eff from and after passage (approved May 26, 1962).

Cross References — Revenue bonds issued by county and municipality jointly, see § 59-5-31.

Details of municipal bonds, see § 59-7-13.

Terms of municipal bonds, see § 59-7-417.

Uniform commercial code, see §§ 75-1-101 et seq.

§ 59-7-313. Disposition of proceeds of bonds; penalties for diversion; guarantee of payment.

The proceeds from the sale of any bonds or other obligations issued pursuant to this article shall be placed to the credit of such municipality in a bank or banks which are members of the Federal Deposit Insurance Corporation and may be withdrawn therefrom in accordance with any agreement or agreements entered into between such municipality and the purchaser or purchasers of such bonds or other obligations and in accordance with the laws regulating the disbursement of municipal funds and shall be used for no other purpose than the purpose or purposes set forth in the original resolution of the governing body of such municipality. Any officer or other person diverting or assisting to divert any such funds to any other purpose or purposes than the purpose or purposes originally set forth in said resolution of the governing body of said municipality shall be guilty of a felony and punishable accordingly, and shall be liable both personally and on official bonds for such diversion. Nothing in this article shall be construed as a guarantee on the part of the State of Mississippi to pay the principal of or interest on any bonds or other obligations issued pursuant to this article.

HISTORY: Codes, 1942, § 7586; Laws, 1934, ch. 209; Laws, 1938, ch. 137.

Cross References — Depositories for funds of local governments, see §§ 27-105-301 et seq.

Diversion of funds, see §§ 59-3-13, 59-7-21, 59-7-121, 59-7-419, 59-15-13.

§ 59-7-315. Mortgage or deed of trust securing bonds.

Any municipality issuing bonds or other obligations pursuant to this article by resolution or resolutions duly adopted, is hereby given authority to execute and deliver a mortgage or deed of trust, in such form, with such validity and with such remedies as at present authorized under the laws of the State of Mississippi, on any or all properties, improvements and facilities, the acquisition, construction, maintenance and/or operation of which are provided for by this article. Such resolution or resolutions of said municipality shall prescribe the provisions, covenants and conditions of any such mortgage or deed of trust. Such provisions, covenants and conditions, if not self-executing, may be enforced by appropriate proceedings, either in law or in equity.

HISTORY: Codes, 1942, § 7587; Laws, 1934, ch. 209.

Cross References — Authority to mortgage port facility, see §§ 59-7-305, 59-7-405, 59-7-421.

Security for small craft harbor bonds, see §§ 59-15-1, 59-15-5, 59-15-9, 59-15-15.

§ 59-7-317. Applicability of municipal debt limitations to bond issues; funds from which bonds payable.

The bonds or other obligations issued by any municipality of the State of Mississippi pursuant to this article shall not constitute a debt within the meaning of any statutory limitation as to the amount of debt which may be incurred by any such municipality, nor shall such bonds or other obligations be payable out of any funds other than the revenue collected or collectible from the use of said docks, harbors and facilities of whatsoever nature, and out of the receipts from the said two-mill ad valorem tax, in accordance with the provisions of Section 59-7-303.

HISTORY: Codes, 1942, § 7580; Laws, 1934, ch. 209.

Cross References — Applicability of debt limitations to municipal port bonds, see § 59-7-423.

Applicability of debt limitations to municipal small craft harbor bonds, see § 59-15-9.

§ 59-7-319. Exemption from taxation of bonds.

Bonds or other obligations issued pursuant to this article and any interest thereon or income therefrom shall be exempt from all taxation, except gift, transfer and inheritance taxes, in so far as may be within the power of the State of Mississippi so to provide.

HISTORY: Codes, 1942, § 7584; Laws, 1934, ch. 209.

Cross References — Exemption of bonds from taxation, see §§ 59-7-425, 59-9-83.

§ 59-7-321. Powers of municipality with respect to issuance of bonds.

In connection with the issuance of bonds or other obligations by any municipality pursuant to this article, or in order to secure the payment of said bonds or other obligations, such municipality shall have power:

(a) To accept grants from the United States of America, the president of the United States, the federal emergency administrator of public works, or such other agencies, instrumentalities or corporations as may be designated or created to make grants or loans (hereinafter termed "federal agency") pursuant to the national industrial recovery act and any further act of the congress of the United States providing for the construction of useful public works (hereinafter termed "national industrial recovery act"), for or in aid of work, development or improvement authorized by this article.

(b) To make such contracts and execute such instruments containing such provisions, covenants and conditions as in the discretion of the authorities of any such municipalities may be necessary, proper or advisable for the purpose of obtaining or securing grants, loans, or other financial assistance from any federal agency pursuant to the national industrial recovery act; to make such further, different or additional contracts and execute all instruments necessary or convenient in or for the furtherance of any work, development or improvement, including but not limited to all property real and personal appurtenant thereto or connected therewith and the existing work, development or improvement, if any, to which the work, development or improvement authorized by this article is an extension, addition, betterment or embellishment (hereinafter termed "work, development or improvement"), to carry out and perform the terms and conditions of any such contract or instrument.

(c) To pledge all or any part of the fees, rents, tolls, revenues or other charges received or receivable by such municipality and/or port commission from any work, development or improvement to which its right then exists or the right to which may thereafter come into existence.

(d) To covenant against the pledging of all or any part of the fees, rents, tolls, revenues or other charges received or receivable by such municipality and/or port commission from any work, development or improvement to which its right then exists or the right to which may thereafter come into existence.

(e) To covenant against the encumbering of all or any part of any work, development or improvement or against permitting or suffering any lien thereon.

(f) To covenant as to what other or additional debt may be incurred by such municipality.

(g) To provide for the preparation, specifications, terms, form, registration, extension, execution and authentication of any bonds or other obligations, issued pursuant to this article.

(h) To provide for the replacement of lost, destroyed or mutilated bonds or other obligations issued pursuant to this article.

(i) To covenant as to the fees, rents, revenues or tolls to be charged, the amount to be raised each year or other period of time and as to the use and disbursement to be made thereof.

(j) To covenant to set aside or to pay over reserves and sinking funds and as to the disposal thereof.

(k) To redeem prior to maturity, with or without premium, bonds or other obligations issued pursuant to this article and to covenant for their prior redemption and to provide the terms and conditions thereof.

(*l*) To covenant against extending the time for the payment of the interest on or principal of the bonds or other obligations issued pursuant to this article directly or indirectly by any means or in any manner.

(m) To covenant as to books of account of such municipality and as to the inspection and audit thereof and as to the accounting methods.

(n) To covenant as to the rights, liabilities, powers and duties arising upon the breach by such municipality of any covenant, condition or obligation assumed pursuant to this article.

(o) To make such covenants and do any and all such acts and things as may be necessary, convenient or desirable in order to secure any bonds or other obligations issued pursuant to this article, or in the absolute discretion of the authorities of such municipality in order to make such bonds or other obligations more marketable, notwithstanding that such covenants, acts, or things may not be enumerated herein or expressly authorized herein; it being the intention hereby to give the authorities of any municipality issuing bonds or other obligations pursuant to this article the power to do all things in the issuance of said bonds or other obligations and for their execution that may not be inconsistent with the constitution of the State of Mississippi.

HISTORY: Codes, 1942, § 7582; Laws, 1934, ch. 209.

Cross References — Authority of municipality to issue bonds, see §§ 59-7-309, 59-7-415.

Powers of municipality in connection with issuance of bond, see § 59-7-427.

§ 59-7-323. Trustees.

Any municipality issuing bonds or other obligations pursuant to this article shall, so long as any such bonds or other obligations remain outstanding and unpaid, by resolution or resolutions duly adopted, authorize and appoint a trustee, satisfactory to the purchaser or purchasers of any bonds or other obligations issued pursuant to this article or any successor thereto, with the following powers and duties:

(a) Such trustee so appointed, or any successor thereto, shall receive and receipt for all monies collected or to be collected as receipts from the aforesaid two-mill tax by the aforesaid tax collector, and/or any other tax collecting agency authorized by law for the collection of said taxes, as provided for in Section 59-7-303;

(b) Such trustee so appointed, or any successor thereto, shall receive and receipt for all monies paid or to be paid to it in accordance with Section 59-7-307, constituting the net revenues derived from the operation of the improvements and facilities authorized by this article;

(c) Such trustee so appointed, or any successor thereto, shall deposit all monies received or to be received, in a special account or accounts in a bank or banks which are members of the Federal Deposit Insurance Corporation, with such provisions for security therefor as may be incorporated in any agreement or agreements entered into between any such municipality and the purchaser or purchasers of any such bonds or other obligations;

(d) Such trustee so appointed, or any successor thereto, shall use and apply all such monies so received to the payment of principal of and interest on any bonds or other obligations issued by any municipality pursuant to this article, as the same become due, and shall use and apply any surplus remaining after such payment or payments for the prior redemption, with or without premium, of bonds or other obligations issued by any municipality pursuant to this article, or in accordance with the provisions of any agreement or agreements as may be made between any municipality issuing bonds or other obligations pursuant to this article and the purchaser or purchasers of such bonds or other obligations;

(e) Such trustee so appointed, or any successor thereto, shall have and be vested with all rights, powers and duties, in addition to the foregoing, as may be provided for in any agreement or agreements between any municipality issuing bonds or other obligations pursuant to this article and the purchaser or purchasers of such bonds, or other obligations;

(f) Such trustee so appointed, or any successor thereto, shall by an instrument in writing, accept such trust and shall file such written acceptance of such trust with the clerk of the municipality so appointing such trustee;

(g) If such trustee so appointed, or any successor thereto, shall fail, neglect or refuse to perform any of the duties herein imposed or that may be imposed by reason of any of the provisions of any agreement or agreements as aforesaid, such trustee, or any successor thereto, shall, on the written request of twenty per centum or more in aggregate principal amount of the holder or holders of bonds or other obligations issued pursuant to this article, be removed, by resolution duly adopted by the municipality by which such trustee, or any successor thereto, was appointed; and in such event, it shall be the duty of any such trustee so removed to effectuate a valid transfer of all monies then in the possession or under the control of such trustee so removed to a duly appointed successor, and a failure on the part of such trustee so removed to do so shall constitute an embezzlement of such monies and shall be punishable accordingly;

(h) In the event any such trustee so appointed, or any successor thereto, shall be removed as hereinabove provided, it shall be the duty of any municipality, which shall have removed any such trustee, immediately by resolution duly adopted to appoint a trustee, as successor thereto, who is satisfactory to said holder or holders of twenty per centum or more in aggregate principal amount of bonds or other obligations issued pursuant to this article.

HISTORY: Codes, 1942, § 7583; Laws, 1934, ch. 209; Laws, 1950, ch. 202.

Cross References — Powers and duties of trustees, see § 59-7-429.

ARTICLE 9.

ADDITIONAL CUMULATIVE PROVISIONS.

Sec.

59-7-401. Construction and effect of article.
59-7-403. Levy of ad valorem tax in certain counties; disposition of proceeds of tax.
59-7-405. Powers of municipal authorities as to promotion, development, etc., of harbors and seaports.
59-7-407. Port commission; composition; appointment, compensation and terms of office of members; organization; dissolution.
59-7-408. Procedure and requirements for dissolution of municipal port commission.
59-7-409. Meetings of commission; officers.
59-7-411. Duties of commission generally; employees.
59-7-413. Maintenance and operation of improvements and facilities by commission; collection, etc., of rents, fees, etc.; disposition of revenues; annual reports.
59-7-415. Authorization of issuance of bonds by municipalities; audit and inspection of accounts.
59-7-417. Exercise of authority for issuance of bonds; form, terms and conditions of bonds; execution of bonds; negotiability and sale of bonds; interim certificates.
59-7-419. Disposition of proceeds of bonds; penalties for diversion; guarantee of payment.
59-7-421. Mortgage or deed of trust securing bonds.
59-7-423. Applicability of municipal debt limitations to bond issues; funds from which bonds payable.
59-7-425. Exemption from taxation of bonds.
59-7-427. Powers of municipality with respect to issuance of bonds.
59-7-429. Trustees.

§ 59-7-401. Construction and effect of article.

Nothing in this article shall be construed as repealing or altering any existing laws now on the statute books affecting any ports or port laws, and this article is to be considered supplementary, and any word, sentence or paragraph in this article that may be in conflict with the provisions of any other law shall not affect any such law. The constitutionality of this article shall not affect any existing law now on the statute, nor shall the constitutionality of any law now on the statutes be questioned with this article.

HISTORY: Codes, 1942, § 7605; Laws, 1940, ch. 290.

§ 59-7-403. Levy of ad valorem tax in certain counties; disposition of proceeds of tax.

An ad valorem tax of one mill on each one dollar of the total assessed valuation of all the taxable property in each county or counties in the State of Mississippi, in which there is located a port or harbor where there is maintained a channel to a depth of not less than eight feet, is hereby levied on all taxable property, in or for each year in which the principal of or interest on any bonds or other obligations issued by any municipality pursuant to this article becomes due. The receipts from said one mill tax shall be withheld by the tax collector of said county, and/or by any other tax collecting agency authorized by law for the collection of said taxes, from receipts from state ad valorem taxes now in effect or which may be hereafter levied, so long as said state ad valorem taxes shall be not less than the said one mill tax herein levied. However, if no state ad valorem taxes equal to or greater than the said one mill tax herein levied is now or shall be hereafter levied, then and in that event, the said one mill tax herein levied shall continue to be levied and collected as herein provided in each such county or counties in or for each year in which the principal of or interest on any bonds or other obligations issued by any municipality pursuant to this article becomes due. The said tax collector, and/or any other tax collecting agency authorized by law for the collection of said taxes, shall pay over all moneys collected or to be collected as receipts from the one mill tax to any trustee or successor thereto established as hereinafter provided in Section 59-7-429, and in the event that there is no such trustee, then said tax collector, and/or any other tax collecting agency authorized by law for collection of said taxes, shall pay over all such moneys into the county depository of each such county to the credit of a fund which shall be known as a port fund. Any such moneys so paid into the county depository of each such county to the credit of said port fund may be expended at the direction of the port commission, appointed for any port or harbor through which commerce flows and having not less than eight industries engaged in the seafood industry. The provisions of this article shall be deemed to be a contract with the holders of any bonds or other obligations issued pursuant to this article.

HISTORY: Codes, 1942, § 7590; Laws, 1940, ch. 290.

Cross References — County tax collectors, see §§ 27-1-1 et seq.

Ad valorem taxes generally, see §§ 27-29-1 et seq.

Authority to construct and operate harbors or seaports under supervision of bridge and park commission, see §§ 55-7-1 et seq.

Use of state tax for port fund, see § 59-7-1.

OPINIONS OF THE ATTORNEY GENERAL

The legislature intended to provide a certain amount of revenue to a port and did not intend that revenue to increase without limitation; i.e., a port may receive the support of tax levies by the county to the extent provided by Section 59-7-403 by means of Section 27-39-329, subject to the ten percent cap on increase in receipts over the previous year. Meadows, Mar. 14, 2003, A.G. Op. #03-0048.

§ 59-7-405. Powers of municipal authorities as to promotion, development, etc., of harbors and seaports.

(1)(a) The governing authorities of any municipality in which there is situated and located, in whole or in part, a port or harbor through which commerce flows, and having not less than eight (8) industries engaged in the seafood industry, which maintains a channel and/or harbor to a depth of not less than eight (8) feet, may engage in, either directly or through the commission hereinafter provided and designated, and such other agencies as hereafter may be provided by law, works of internal improvement, or promoting, developing, constructing, maintaining and operating harbors or seaports within the state and its jurisdiction, and either directly or through the commission hereinafter provided for, with the power and authority to acquire, purchase, install, rent, lease, mortgage and/or otherwise encumber, to construct, own, hold, maintain, equip, use, control and operate at seaports or harbors, wharves, piers, docks, warehouses, cold storage facilities, water and rail terminals, airplane landing fields and strips, and other structures and facilities, needful for the convenient use of the same in the aid of commerce and navigation, and including the dredging of channels and approaches to the facilities, and being authorized to fill in and reclaim bottomlands where incidental and necessary to the foregoing development.

(b) A municipality, which is operating a port through a port commission under this section, may dissolve the port commission as provided in Section 59-7-408 and directly operate and maintain the port as provided under this article.

(2) The municipal authorities or commission, in connection with the exercise of the foregoing works of improvement and development, may as an adjunct to any such work of improvement or development to erect or construct such bridges, causeways or structures as may be required for access to and from the harbors or facilities provided as aforesaid by the municipal authorities or the commission, and including any necessary bridge or causeway or combination of the same, connecting with any island or islands lying within three (3) leagues of the main shoreline of the Mississippi Sound or the Gulf of Mexico, and whether the same be within or without the limits of the municipality concerned.

(3) The municipal authorities or commission may procure, by gift, grant, purchase, or by the exercise of eminent domain, and for the public purposes and uses herein provided for, such land or interest therein as may be required for the purposes of this article, and regardless of whether the land be within or without the limits of the municipality involved.

(4) The municipal authorities or commission, in the exercise of the powers granted hereunder, may provide any of the aforesaid facilities alone or in collaboration and in conjunction with any other public bodies, entities or commissions, as may now or hereafter be established by law.

(5) The municipal authorities or commission may provide, among other harbor facilities, small craft and pleasure craft harbors and facilities needed therefor, including park and recreational facilities as an adjunct thereto, and in order to develop and promote tourist and recreational trade in the port.

(6) The municipal authorities or commission have the power and authority to carry out the provisions of this article, to employ engineers, attorneys, and such employees as may be necessary in carrying out the provisions of this article, from time to time, and for the purpose of operating the facilities herein provided for, and may prescribe reasonable compensation in connection with such employment.

HISTORY: Codes, 1942, § 7591; Laws, 1940, ch. 290; Laws, 1960, ch. 344, § 1; Laws, 1984, ch. 444, § 1; Laws, 2004, ch. 385, § 1, eff from and after passage (approved Apr. 20, 2004).

Cross References — Taking private property for public use, see Miss. Const. Art. 3, § 17.

Eminent domain, see §§ 11-27-1 et seq.

General power of municipalities to construct harbor improvements, see § 21-37-15.

Authority to construct and operate port facilities under supervision of bridge and park commission, see §§ 55-7-1 et seq.

Issuance of bonds to finance construction and operation of port facilities, see § 59-7-417.

Limitation on debts which may be incurred by municipality, see § 59-7-423.

Small craft harbors, see §§ 59-15-1 et seq.

§ 59-7-407. Port commission; composition; appointment, compensation and terms of office of members; organization; dissolution.

A port commission created under this article shall consist of six (6) members who shall be qualified electors of the municipality operating under this article, and shall be appointed as follows: two (2) shall be appointed by the Governor, two (2) shall be appointed by the governing authorities of the municipality, and two (2) shall be appointed by the board of supervisors of the county. The commission shall have jurisdiction over the port, terminals, harbors and passes leading thereto, and all vessels, boats and wharves, common carriers and public utilities using the port. Commissioners shall be paid the uniform per diem compensation authorized in Section 25-3-69 for the discharge of official duties at meetings called in accordance with Section 59-7-409.

In the first instance, the two (2) commissioners appointed by the Governor shall be appointed for terms of five (5) and four (4) years, respectively, from the date of appointment; one (1) member appointed by the board of supervisors shall be appointed for a term of three (3) years from the date of appointment, and the members appointed by the governing authorities of the municipality shall be appointed for terms of two (2) and one (1) years, respectively, from the date of appointment. The additional member appointed by the board of supervisors shall be appointed to a term of five (5) years. After the first appointments, thereafter each member appointed shall be appointed for a term of five (5) years.

The commission shall, upon appointment, organize as provided in Section 59-7-409.

A port commission created under this article may be dissolved by the governing authorities of the municipality as provided under Section 59-7-408.

HISTORY: Codes, 1942, § 7592; Laws, 1940, ch. 290; Laws, 1960, ch. 344, § 2; Laws, 1984, ch. 444, § 2; Laws, 1998, ch. 371, § 1; Laws, 2004, ch. 385, § 2, eff from and after passage (approved Apr. 20, 2004).

Cross References — Creation of harbor commission and appointment of commissioners, see §§ 59-1-1 et seq.

§ 59-7-408. Procedure and requirements for dissolution of municipal port commission.

(1) The governing authorities of a municipality may dissolve a port commission created under this article by adopting a resolution in which they determine that the dissolution of the port commission is in the best interest of the citizens of the municipality and authorizing the municipality to assume the powers and duties of the port commission.

(2) After the adoption of the dissolution resolution, the port commission shall enter into an agreement with the municipality which shall provide for:

(a) the transfer of all powers, duties, and responsibilities of the port commission to the municipality;

(b) the transfer of all property and assets, real and personal, of the port commission to the municipality;

(c) the assignment of all contracts, leases, agreements and revenue generated by the port commission to the municipality;

(d) the assumption by the municipality of all just claims and obligations of the port commission associated with the operation and maintenance of the port facilities; and

(e) any other provisions necessary for the implementation of the dissolution.

(3) All tax levies and assessments used for existing bonded indebtedness shall continue until such indebtedness is paid.

HISTORY: Laws, 2004, ch. 385, § 3, eff from and after passage (approved Apr. 20, 2004).

§ 59-7-409. Meetings of commission; officers.

The port commission established by Section 59-7-407 shall meet at a regular place to be designated by the port commission for organization as a port commission, after giving at least ten (10) days' notice of the time and place of the meeting by publication in a newspaper published in the city, and they shall elect a president and secretary who shall be members of the commission. The president shall be elected annually and shall vote only in cases of a tie vote.

HISTORY: Codes, 1942, § 7593; Laws, 1940, ch. 290; Laws, 1998, ch. 371, § 2, eff from and after passage (approved March 16, 1998).

§ 59-7-411. Duties of commission generally; employees.

It shall be the duty of the commission to keep a minute book in which shall be recorded all of their acts, orders, rules and regulations. It shall be the duty of said commission to adopt rules and regulations not inconsistent with law to govern their official acts. It shall be the duty of said commission to make and publish all needful rules and regulations to govern the harbor, docks, and passes within its jurisdiction, and to fix tariffs, fees, fines, penalties and forfeitures for the violations of the rules and regulations of said commission, and said commission shall have the power to fix and determine all port and terminal charges, and it may enforce the collection thereof through any court of competent jurisdiction in this state. This section shall not apply to public utilities nor to railroad terminal charges covered by or carried in approved tariffs authorized by Interstate Commerce Commission nor to lawful railroad operation and activities.

It shall be the duty of said commission to employ such help, including a port director, secretary, and such other help as will be necessary to carry on the business and work of such commission, and it will be the duty of said port commissioners to see that all port employees, such as harbormaster, pilots, and any and all other necessary employees for the operation of said port, perform any and all such duties as required for the operation of said port, at salaries to be determined by said port commission.

HISTORY: Codes, 1942, § 7594; Laws, 1940, ch. 290.

Cross References — Duties and powers of harbor commission, see § 59-1-9.
Duties and powers of county port authority, see § 59-9-15.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 76 et seq.

§ 59-7-413. Maintenance and operation of improvements and facilities by commission; collection, etc., of rents, fees, etc.; disposition of revenues; annual reports.

All improvements and facilities constructed pursuant to this article shall be maintained and operated under the control of the port commission as provided by this article. The port commission shall, subject to and in accordance with any agreement or agreements as may be made by any such municipality with the purchaser or purchasers of bonds or other obligations issued pursuant to this article, prescribe, levy and collect all rents, fees, tolls, revenues and/or other charges in connection with the use and occupancy of the aforesaid improvements and facilities, and shall pay over all net revenues derived from the operation of said improvements and facilities to any trustee, or successor thereto, established as hereinafter provided in Section 59-7-429. The net revenues shall be deemed to be such as may be defined in any agreement or agreements entered into between any such municipality and the purchaser or purchasers of any bonds or other obligations issued pursuant to this article. The port commission shall make an annual report to the governor of the State of Mississippi, to the municipality having such port or harbor, and to the state legislature.

HISTORY: Codes, 1942, § 7595; Laws, 1940, ch. 290; Laws, 1970, ch. 410, § 1, eff from and after July 1, 1970.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 76 et seq.

§ 59-7-415. Authorization of issuance of bonds by municipalities; audit and inspection of accounts.

Any municipality, in which there is situated and located in whole or in part a port or harbor through which commerce flows and having not less than eight industries engaged in the seafood industry as aforesaid, is hereby given authority, upon the adoption of a resolution to such effect, to issue bonds or other obligations for any or all of the purposes as provided in this article. The books of account and other sources of information pertaining to duties under the provisions of this article, or any port commission, municipality and/or county affected by this article, shall be and remain at all times open to inspection and subject to audit by the holder or holders of any bonds or other obligations issued pursuant to this article.

HISTORY: Codes, 1942, § 7597; Laws, 1940, ch. 290.

Cross References — Municipal bonds generally, see §§ 21-33-301 et seq.

Authority of municipality in which port of entry is located to issue bonds, see § 59-7-309.

Details of bonds issued pursuant to authority of this section, see § 59-7-417.

Bond issues pursuant to law creating county port authority, see § 59-9-37.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 72 et seq.

§ 59-7-417. Exercise of authority for issuance of bonds; form, terms and conditions of bonds; execution of bonds; negotiability and sale of bonds; interim certificates.

The power to issue bonds or other obligations authorized by Section 59-7-415 shall be vested in, and may be exercised from time to time by the governing body of any such municipality described in said section. Such bonds or other obligations shall be authorized by resolution of the governing body of any such municipality and shall bear such date or dates, mature at such time or times, not exceeding twenty (20) years from their respective dates, be in such denomination, be in such form, either coupon or registered, carry such registration privileges, be executed in such a manner, be payable in such medium of payment, at such place or places, and be subject to such terms of prior redemption, with or without premium, as such resolution or resolutions may provide. Such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) interest coupon shall not exceed the maximum interest rate on such bonds.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (1/10 of 1%). Such bonds shall be executed by the manual or facsimile signature of the mayor and clerk of such municipality, with the seal of the municipality affixed thereto. At least one (1) signature on each bond shall be a manual signature, as specified in the resolution. The coupons may bear only the facsimile signatures of such mayor and clerk. Such bonds or other obligations may be sold at public or private sale for such price or prices as the governing body of such municipality shall determine, but in no case to exceed the rate of interest hereinbefore provided. No bonds shall be issued and sold under the provisions of this article for less than par and accrued interest.

Such bonds or other obligations may be issued by any municipality described in Section 59-7-415 in a principal amount not exceeding Seven Million Five Hundred Thousand Dollars ($7,500,000.00) outstanding at any one (1) time for any purpose or purposes authorized by Section 59-7-405. Such municipality shall have power, out of any funds available, to purchase any bonds or other obligations issued by it pursuant to this article, and all bonds or other obligations so purchased shall be cancelled, and no bonds or other obligations shall be issued in lieu thereof. In anticipation of the issuance of the definitive bonds authorized by this article, any such municipality may issue interim certificates. Such interim certificates shall be in such form, contain such terms, conditions or provisions, bear such date or dates, and evidence such agreement or agreements, relating to their discharge by payment or by the delivery of the definitive bonds, as such municipality, by resolution of its governing body, may determine. Any bonds, interim certificates or other obligations issued pursuant to this article shall be fully negotiable within the meaning and for all the purposes of the Mississippi Uniform Commercial Code, and may be validated as provided by statute.

HISTORY: Codes, 1942, § 7601; Laws, 1940, ch. 290; Laws, 1960, ch. 344, § 3; Laws, 1970, ch. 500, § 1; Laws, 1981, ch. 462, § 17; Laws, 1982, ch. 434, § 30; Laws, 1983, ch. 541, § 38; Laws, 1984, ch. 444, § 3; Laws, 1988, ch. 452, eff from and after passage (approved April 26, 1988).

Cross References — Details of bonds issued by municipality in which port of entry is located, see § 59-7-311.

§ 59-7-419. Disposition of proceeds of bonds; penalties for diversion; guarantee of payment.

The proceeds from the sale of any bonds or other obligations issued pursuant to this article shall be placed to the credit of such municipality in a bank or banks, which are members of the federal deposit insurance corporation and may be withdrawn therefrom in accordance with any agreement or agreements entered into between such municipality and the purchaser or purchasers of such bonds or other obligations and shall be used for no other purpose than the purpose of such municipality. Any officer or other person diverting or assisting to divert any such funds to any other purpose or purposes than the purpose or purposes originally set forth in said resolution of the governing body of said municipality shall be guilty of a felony and punishable accordingly, and shall be liable both personally and on official bonds for such diversion.

Nothing in this article shall be construed as a guarantee on the part of the State of Mississippi to pay the principal or interest on any bonds or other obligations issued pursuant to this article.

HISTORY: Codes, 1942, § 7602; Laws, 1940, ch. 290; Laws, 1944, ch. 216, § 2.

Cross References — Penalty for diversion of municipal bonds, see § 21-33-317.

§ 59-7-421. Mortgage or deed of trust securing bonds.

Any municipality issuing bonds or other obligations pursuant to this article by resolution or resolutions duly adopted, is hereby given authority to execute and deliver a mortgage or deed of trust, in such form, with such validity and with such remedies as at present authorized under the laws of the State of Mississippi, on any or all properties, improvements and facilities, the acquisition, construction, maintenance and/or operation of which are provided for by this article. Such resolution or resolutions of said municipality shall prescribe the provisions, covenants and conditions of any such mortgage or deed of trust. Such provisions, covenants and conditions, if not self-executing, may be enforced by appropriate proceedings, either in law or in equity.

HISTORY: Codes, 1942, § 7603; Laws, 1940, ch. 290.

Cross References — Form of mortgage or deed of trust, see § 89-1-63.

§ 59-7-423. Applicability of municipal debt limitations to bond issues; funds from which bonds payable.

The bonds or other obligations issued by any municipality of the State of Mississippi pursuant to this article shall not constitute a debt within the meaning of any statutory limitation as to the amount of debt which may be incurred by any such municipality, nor shall such bonds or other obligations be payable out of any funds other than the revenue collected or collectible from the use of said docks, harbors and facilities of whatsoever nature, and out of the receipts the said one mill ad valorem tax, in accordance with the provisions of Section 59-7-403.

HISTORY: Codes, 1942, § 7596; Laws, 1940, ch. 290.

Cross References — Applicability of debt limitations to municipal harbor bonds, see § 59-7-317.

Applicability of debt limitations to municipal small craft harbor bonds, see § 59-15-9.

§ 59-7-425. Exemption from taxation of bonds.

Bonds or other obligations issued pursuant to this article and any interest thereon or income therefrom shall be exempt from all taxation, except gift, transfer and inheritance taxes, in so far as may be within the power of the State of Mississippi so to provide.

HISTORY: Codes, 1942, § 7600; Laws, 1940, ch. 290.

Cross References — Exemption of bonds from taxation, see §§ 59-7-319, 59-9-83.

§ 59-7-427. Powers of municipality with respect to issuance of bonds.

In connection with the issuance of bonds or other obligations by any municipality pursuant to this article, or in order to secure the payment of said bonds or other obligations, such municipality shall have power:

(a) To accept grants from the United States of America, the president of the United States, the federal emergency administrator of public works, or such other agencies, instrumentalities or corporations as may be designated or created to make grants or loans (hereinafter termed "federal agency") pursuant to the national industry recovery act and any further act of the congress of the United States providing for the construction of useful public works (hereinafter termed "national industrial recovery act"), for or in aid of work, development or improvement authorized by this article.

(b) To make such contracts and execute such instruments containing such provisions, covenants and conditions as in the discretion of the authorities of any such municipalities may be necessary, proper or advisable for the purpose of obtaining or securing grants, loans, or other financial assistance from any federal agency pursuant to the national industrial recovery act; to make such further, different or additional contracts and execute all instruments necessary or convenient in or for the furtherance of any work, development or improvement, including but not limited to all property, real and personal, appurtenant thereto or connected therewith and the existing work, development or improvement, if any, to which the work, development or improvement authorized by this article is an extension, addition, betterment or embellishment (hereinafter termed "work, development or improvement") to carry out and perform the terms and conditions of any such contract or instrument.

(c) To pledge all or any part of the fees, rents, tolls, revenues or other charges received or receivable by such municipality and/or port commission from any work, development or improvement to which its right then exists or the right to which may thereafter come into existence.

(d) To covenant against the pledging of all or any part of the fees, rents, tolls, revenues or other charges received or receivable by such municipality and/or port commission from any work, development or improvement to which its right then exists or the right to which may thereafter come into existence.

(e) To covenant against the encumbering of all or any part of any work, development or improvement or against permitting or suffering any lien thereon.

(f) To covenant as to what other or additional debt may be incurred by such municipality.

(g) To provide for the preparation, specifications, terms, form, registration, extension, execution and authentication of any bonds or other obligations, issued pursuant to this article.

(h) To provide for the replacement of lost, destroyed or mutilated bonds or other obligations issued pursuant to this article.

(i) To covenant as to the fees, rents, revenues or tolls to be charged, the amount to be raised each year or other period of time and as to the use and disbursement to be made thereof.

(j) To covenant to set aside or to pay over reserves and sinking funds and as to the disposal thereof.

(k) To redeem prior to maturity, with or without premium, bonds or other obligations issued pursuant to this article and to covenant for their prior redemption and to provide the terms and conditions thereof.

(*l*) To covenant against extending the time for the payment of the interest on or principal of the bonds or other obligations issued pursuant to this article directly or indirectly by any means or in any manner.

(m) To covenant as to books of account of such municipality and as to the inspection and audit thereof and as to the accounting methods.

(n) To covenant as to the rights, liabilities, powers and duties arising upon the breach by such municipality of any covenant, condition or obligation assumed pursuant to this article.

(o) To make such covenants and do any and all such acts and things as may be necessary, convenient or desirable in order to secure any bonds or other obligations issued pursuant to this article, or in the absolute discretion of the authorities of such municipality in order to make such bonds or other obligations more marketable, notwithstanding that such covenants, acts, or things may not be enumerated herein or expressly authorized herein; it being the intention hereby to give the authorities of any municipality issuing bonds or other obligations pursuant to this article the power to do all things in the issuance of said bonds or other obligations and for their execution that may not be inconsistent with the constitution of the State of Mississippi.

HISTORY: Codes, 1942, § 7598; Laws, 1940, ch. 290.

Cross References — Municipal bonds generally, see §§ 21-33-301 et seq.
Establishment of sinking fund for certain municipal bonds, see §§ 59-3-5, 59-7-13.
Powers of municipality to issue bonds for operation of port facilities, see § 59-7-321.
Sinking fund for joint county and municipal bond issue, see § 59-9-59.

§ 59-7-429. Trustees.

Any municipality issuing bonds or other obligations pursuant to this article shall, so long as any such bonds or other obligations remain outstanding and unpaid, by resolution or resolutions duly adopted, authorize and appoint a trustee, satisfactory to the purchaser or purchasers of any bonds or other obligations issued pursuant to this article, or any successor thereto, with the following powers and duties:

(a) Such trustee so appointed, or any successor thereto, shall receive and receipt for all moneys collected or to be collected as receipts from the aforesaid two-mill tax by the aforesaid tax collector, and/or any other tax collecting agency authorized by law for the collection of said taxes, as provided for in Section 59-7-403;

(b) Such trustee so appointed, or any successor thereto, shall receive and receipt for all moneys paid or to be paid to it in accordance with Section 59-7-407, constituting the net revenues derived from the operation of the improvements and facilities authorized by this article;

(c) Such trustee so appointed, or any successor thereto, shall deposit all moneys received or to be received, in a special account or accounts in a bank or banks which are members of the federal deposit insurance corporation, with such provisions for security therefor as may be incorporated in any agreement or agreements entered into between any such municipality and the purchaser or purchasers of any such bonds or other obligations;

(d) Such trustee so appointed, or any successor thereto, shall use and apply all such moneys so received to the payment of principal of and interest on any bonds or other obligations issued by any municipality pursuant to this article, as the same becomes due, and shall use and apply any surplus remaining after such payment or payments for the prior redemption, with or without premium, of bonds or other obligations issued by any municipality pursuant to this article, or in accordance with the provisions of any agreement or agreements as may be made between any municipality issuing bonds or other obligations pursuant to this article and the purchaser or purchasers of such bonds or other obligations;

(e) Such trustee so appointed, or any successor thereto, shall have and be vested with all rights, powers and duties, in addition to the foregoing, as may be provided for in any agreement or agreements between any municipality issuing bonds or other obligations pursuant to this article and the purchaser or purchasers of such bonds or other obligations;

(f) Such trustee so appointed, or any successor thereto, shall by an instrument in writing, accept such trust and shall file such written acceptance of such trust with the clerk of the municipality so appointing such trustee;

(g) If such trustee so appointed, or any successor thereto, shall fail, neglect or refuse to perform any of the duties herein imposed or that may be imposed by reason of any of the provisions of any agreement or agreements as aforesaid, such trustee, or any successor thereto, shall, on the written request of twenty per centum or more in aggregate principal amount of the holder or holders of bonds or other obligations issued pursuant to this article, be removed, by resolution duly adopted by the municipality by which such trustee, or any successor thereto, was appointed; and in such event, it shall be the duty of any such trustee so removed to effectuate a valid transfer of all moneys then in the possession or under the control of such trustee so removed to a duly appointed successor, and a failure on the part of such trustee so removed to do so shall constitute an embezzlement of such moneys and shall be punishable accordingly;

(h) In the event any such trustee so appointed, or any successor thereto, shall be removed as hereinabove provided, it shall be the duty of any municipality which shall have removed any such trustee, immediately by resolution duly adopted to appoint a trustee as successor thereto, who is satisfactory to said holder or holders of twenty per centum or more in aggregate principal amount of bonds or other obligations issued pursuant to this article.

HISTORY: Codes, 1942, § 7599; Laws, 1940, ch. 290; Laws, 1944, ch. 216, § 1.

Cross References — Powers and duties of trustees, see § 59-7-323.

ARTICLE 10.

PORT COMMISSIONS IN COUNTIES BORDERING ON MISSISSIPPI RIVER.

Sec.

59-7-451. Creation of additional county port commissions authorized.
59-7-453. Membership of commission; appointment and terms of office of members; general powers and duties.
59-7-455. Operative date of commission's duties and authority; expenditure of county funds.

§ 59-7-451. Creation of additional county port commissions authorized.

Any county in the State of Mississippi bordering on the Mississippi River which has not heretofore created a county port authority or county port commission is hereby authorized, in the discretion of the board of supervisors of such county, as evidenced by a resolution adopted by such board of supervisors, to create a county port commission.

HISTORY: Laws, 1973, ch. 340, § 1, eff from and after passage (approved March 21, 1973).

§ 59-7-453. Membership of commission; appointment and terms of office of members; general powers and duties.

Such county port commission shall consist of seven (7) members to be appointed by the board of supervisors, one (1) of whom shall represent each of the supervisors districts of the county and shall be a resident of such supervisor's district, and two (2) members shall be appointed from the county at large and be residents of the county. The two (2) at-large members shall be designated as post 1 and post 2. The initial terms of office of the members representing the supervisors districts shall expire as follows: District 1, July 1, 1974; District 2, July 1, 1975; District 3, July 1, 1976; District 4, July 1, 1977; District 5, July 1, 1978. The at-large members' terms shall expire as follows: post 1 shall expire July 1, 1979, and post 2 shall expire July 1, 1981. All succeeding terms shall be for terms of five (5) years. Any vacancy occurring therein shall be filled for the unexpired term by appointment of the board of supervisors. Where such port commission has been established or may be established as herein provided, the said port commission shall undertake and perform the duties assigned to it by the board of supervisors, and said commission shall manage and control all port facilities which may be authorized and constructed by virtue of the terms and provisions of Sections 59-7-101 through 59-7-131, 59-7-201 through 59-7-213, and 59-7-501 through 59-7-519, and all appurtenant and physical properties connected therewith, both real and personal, and shall provide for the regular inspection, repair, maintenance and improvement of said port facilities as provided therein.

In addition to the authority granted herein, and notwithstanding the provisions of any other law to the contrary, the commission may, subject to the approval of the board of supervisors, purchase any existing railroad or railroad facilities, within or without such county, which it deems necessary for the development of its port facilities.

In addition to any other authority to borrow funds for the purposes of this chapter, the board of supervisors may borrow funds from any agency of the United States government on such terms as the board determines to be in the best interest of the county.

Any railroad or railroad facilities purchased under the provisions of this section may be operated by the county or others on behalf of the county, or may be leased to others by the county. The commission may establish, charge and collect any tariffs, rates or other charges in connection therewith as may be necessary or advisable to accomplish the purposes of this section.

HISTORY: Laws, 1973, ch. 340, § 2; Laws, 1978, ch. 460, § 1; Laws, 1979, ch. 304, eff from and after passage (approved February 19, 1979).

Cross References — County bonds generally, see §§ 19-9-1 et seq.

Inapplicability of authorization to establish railroad authorities to counties authorized under this section to operate railroad facilities, see § 19-29-47.

§ 59-7-455. Operative date of commission's duties and authority; expenditure of county funds.

The duties and authority conferred in Sections 59-7-101 through 59-7-131, through 59-7-201 through 59-7-211, 59-7-501 through 59-7-519, and Sections 27-39-3 through 27-39-13, Mississippi Code of 1972, shall apply to any county coming within the provisions of this article commencing on the date of the adoption of the aforesaid resolution by the board of supervisors of said county; provided, however, that the members of such port commission shall be appointed by the method and for the terms as herein provided. In addition to the authority granted herein, the board of supervisors may, in its discretion, expend funds from any available source, including the county general fund and federal revenue sharing funds, to carry out the purposes of this article.

HISTORY: Laws, 1973, ch. 340, § 3, eff from and after passage (approved March 21, 1973).

Editor's Notes — Sections 27-39-3 through 27-39-13 referred to in this section were repealed by Laws of 1980, ch. 505, § 24, (as amended by Laws of 1981, 1st Ex Sess, ch. 5, § 1), effective September 30, 1982.

ARTICLE 11.

REVENUE BONDS.

Sec.
59-7-501. Authorization for issuance of revenue bonds for port or harbor improvement.
59-7-503. Issuance of bonds without election; form, terms and execution of bonds.
59-7-505. Interest on bonds.
59-7-507. Negotiability of bonds and coupons; exemption from taxation.
59-7-509. Sale of bonds.
59-7-511. Disposition of proceeds of bonds.
59-7-513. Conditions for issuance of bonds; validation of bonds.
59-7-515. Sources for payment of principal and interest on bonds.
59-7-517. Operation and maintenance of facilities and establishment of user rates, fees and charges by county issuing bonds.
59-7-519. Disposition of revenues from facilities.

§ 59-7-501. Authorization for issuance of revenue bonds for port or harbor improvement.

The board of supervisors of any county which has elected or hereafter may elect to establish a port commission under the provisions of Article 3 of this chapter, and which desires to improve its port and harbor facilities by the construction, maintenance and operation of any revenue-producing port and/or harbor facility or facilities may issue revenue bonds of such county to provide funds for such purpose.

HISTORY: Codes, 1942, § 7576-51; Laws, 1970, ch. 407, § 1, eff from and after passage (approved April 1, 1970).

§ 59-7-503. Issuance of bonds without election; form, terms and execution of bonds.

Revenue bonds authorized by Section 59-7-501 may be issued without an election thereon upon the adoption of a resolution by the board of supervisors of such county upon the request and recommendation of the port commission of such county. Such revenue bonds shall not be subject to any limitation as to amount and shall not be included in computing the statutory limitation of indebtedness of such county under any present or future law. Such bonds shall bear date or dates, shall be of such denomination or denominations, shall be payable at such place or places within or without the State of Mississippi, shall mature at such time or times and upon such terms and may be made redeemable prior to maturity with or without premium, shall bear such registration privileges and shall be in substantially such form as shall be determined by resolution of the board of supervisors of such county. Such bonds shall mature in annual installments beginning not more than five (5) years from the date thereof and extending not more than twenty-five (25) years from the date thereof. Such bonds shall be signed by the president of the board of supervisors of such county and the official seal of the county shall be affixed thereto, attested by the clerk of the board of supervisors of such county. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever such bonds shall have been signed by the officials designated to sign the same who were in office at the time of such signing but who may have ceased to be such officers prior to the date of the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

HISTORY: Codes, 1942, § 7576-52; Laws, 1970, ch. 407, § 2; Laws, 1982, ch. 434, § 31, eff from and after passage (approved April 3, 1982).

Cross References — Signatures on county bonds generally, see § 19-9-19.
Signature on bonds for harbor improvements, see § 59-13-9.

§ 59-7-505. Interest on bonds.

All bonds shall bear interest at such rate or rates as may be determined by resolution of the board of supervisors of the county issuing them, not to exceed an overall maximum interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than sixty percent (60%) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) interest coupon shall not exceed the maximum interest rate allowed on such bonds.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (1⁄10 of 1%), and a zero rate of interest cannot be named.

HISTORY: Codes, 1942, § 7576-53; Laws, 1970, ch. 407, § 3; Laws, 1981, ch. 462, § 18; Laws, 1982, ch. 434, § 32; Laws, 1983, ch. 541, § 39, eff from and after passage (approved April 25, 1983).

Cross References — Interest on county bonds generally, see §§ 19-9-7 et seq.

§ 59-7-507. Negotiability of bonds and coupons; exemption from taxation.

All bonds and interest coupons issued under the provisions of this article shall have and hereby are declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of Mississippi. Such bonds and the income therefrom shall be exempt from all taxation within the State of Mississippi.

HISTORY: Codes, 1942, § 7576-54; Laws, 1970, ch. 407, § 4, eff from and after passage (approved April 1, 1970).

Cross References — Uniform Commercial Code, see §§ 75-1-101 et seq.

§ 59-7-509. Sale of bonds.

The board of supervisors of any county issuing bonds under the provisions of this article shall sell such bonds on sealed bids at not less than par plus accrued interest to date of delivery of the bonds to the purchaser, and in the manner provided in Section 31-19-25, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 7576-55; Laws, 1970, ch. 407, § 5, eff from and after passage (approved April 1, 1970).

§ 59-7-511. Disposition of proceeds of bonds.

The proceeds of the revenue bonds shall be paid into a special fund designated as the "special project port improvement fund" in a bank or banks qualified as depositories for the county issuing bonds under the provisions of this article, and such proceeds shall be used solely for the purposes for which such bonds were issued, except as hereinafter provided, and shall be disbursed upon order of the board of supervisors of such county with such restrictions, if any, as the resolution authorizing the issuance of the bonds may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the project for which such bonds were issued, and the redeeming of any outstanding bonds, unless otherwise provided in the resolution authorizing the issuance of such bonds, additional bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution authorizing the issuance of such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same funds without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the project for which the bonds were issued, such surplus shall be paid into the fund established for the payment of the principal of and interest on such bonds.

HISTORY: Codes, 1942, § 7576-56; Laws, 1970, ch. 407, § 6, eff from and after passage (approved April 1, 1970).

Cross References — Depositories for local governments, see §§ 27-105-301 et seq.

§ 59-7-513. Conditions for issuance of bonds; validation of bonds.

The revenue bonds authorized to be issued by the provisions of this article may be issued without any other proceedings or the happening of any other conditions or things than those specified or required by this article. In the discretion of the board of supervisors of such county the bonds authorized and issued hereunder may be submitted to validation in the chancery court of such county in the manner and with the force and effect now or hereafter provided by Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds.

HISTORY: Codes, 1942, § 7576-57; Laws, 1970, ch. 407, § 7, eff from and after passage (approved April 1, 1970).

§ 59-7-515. Sources for payment of principal and interest on bonds.

The revenue bonds issued under the provisions of this article shall be payable, both principal and interest, solely out of the revenues to accrue from the operation of the facilities provided through the special project for which such bonds are issued, and the full faith and credit of the county shall not be pledged therefor, nor shall any ad valorem tax be levied for the payment of such bonds or the interest thereon, and such facts shall be recited on the face of the bonds.

HISTORY: Codes, 1942, § 7576-58; Laws, 1970, ch. 407, § 8, eff from and after passage (approved April 1, 1970).

§ 59-7-517. Operation and maintenance of facilities and establishment of user rates, fees and charges by county issuing bonds.

Any county issuing revenue bonds under the provisions of this article is hereby authorized by contract or otherwise to provide for the operation and maintenance of facilities provided through the special project for which such bonds are issued and to establish the rates, fees and charges to be paid by users of such port and/or harbor facilities and shall provide for a revision of such rates, fees and charges from time to time as may be necessary to assure the sufficiency of funds to meet the covenants and pledges made in the resolution pursuant to which such bonds were issued.

HISTORY: Codes, 1942, § 7576-59; Laws, 1970, ch. 407, § 9, eff from and after passage (approved April 1, 1970).

§ 59-7-519. Disposition of revenues from facilities.

All revenues of every kind and character derived from the operation of the facilities of any special project authorized by the provisions of this article shall be paid into the port fund of such county and into a special account in said fund to be designated as the "special project revenue fund" and the resolution of the board of supervisors directing the issuance of such bonds shall require that such revenues shall be allocated to and shall be pledged for the following purposes:

(a) an operation and maintenance fund out of which there shall be paid the usual and necessary expenses for the operation and maintenance of the project facilities;

(b) a renewal and replacement fund sufficient to assure that the project facilities, including equipment, shall be kept in good repair and working order;

(c) a bond and interest fund which shall be sufficient to provide for the payment of the principal of and the interest on the bonds as they mature and accrue, including a reasonable sum for the creation of a bond reserve fund to assure the payment of such bonds and the interest therein in the event that sufficient funds therefor are not otherwise available; and

(d) a contingent fund to provide for unforeseen contingencies arising in the operation of the project facilities. Any surplus funds remaining after making the foregoing allocations shall be dealt with as may be directed by the resolution of the board of supervisors whereunder such bonds are issued, for the repayment of advances received from any source, for the payment of any maturities of principal and interest of such bonds, for the improvement of the port and/or harbor facilities for which such bonds were issued, or for the retirement of the outstanding bonds according to their terms.

HISTORY: Codes, 1942, § 7576-60; Laws, 1970, ch. 407, § 10, eff from and after passage (approved April 1, 1970).

CHAPTER 9.

COUNTY PORT AUTHORITY OR DEVELOPMENT COMMISSION

Sec.
59-9-1. Declaration of public policy.
59-9-3. Construction of chapter.
59-9-5. Definitions.
59-9-7. Creation of county port authority or development commission; composition; jurisdiction.
59-9-9. Appointment, oath, bond, and terms of office of members.
59-9-11. Organization; meetings.
59-9-13. Compensation of members.
59-9-15. General powers and duties of authority or commission; director; additional clerical assistance; commission may enter into joint venture for construction and operation of facilities under jurisdiction of commission.
59-9-17. General powers and authority of county; validation of prior acts.
59-9-19. Additional powers and authority of county.
59-9-21. Restoration of sand beaches; leasing for development of port and related industrial facilities.
59-9-23. Establishment and development of industrial parks.
59-9-25. Contracts for construction, maintenance, etc., of ports, facilities, etc.
59-9-27. Jurisdiction and duty of port authority over improvements; powers and duties of development commission.
59-9-29. Jurisdiction over lands.
59-9-31. Lease or sale of unused lands for industrial purposes; authority and limitations.
59-9-33. Lease or sale of unused lands for industrial purposes; terms and conditions.
59-9-35. Exemption from ad valorem taxes of certain lease contracts; time limit; lessee required to pay taxes after expiration of exemption.
59-9-37. Issuance of bonds and interim certificates.
59-9-39. Attorney's fees for issuance of general obligation bonds.
59-9-41. Revenue bonds.
59-9-43. Sale and disposition of proceeds of bonds issued under §§ 59-9-37 and 59-9-41.
59-9-45. Negotiability and taxation of bonds issued under §§ 59-3-37 and 59-9-41.
59-9-47. Proceedings for issuance and validation of bonds issued under §§ 59-9-37 and 59-9-41.
59-9-49. Levy of ad valorem tax for operating fund.
59-9-51. County-wide election on issuance of bonds under §§ 59-9-37 and 59-9-41.
59-9-53. Pledge of county credit and resources for payment of bonds; issuance of revenue bonds.
59-9-55. Investment of proceeds of bonds.
59-9-57. Joint development, maintenance, operation, etc., of ports by county port authority or commission and municipality; joint bond issue.
59-9-59. Joint bond issue; tax levy; collection and disposition of taxes.
59-9-61. Joint bond issue; control of facilities; collection and disposition of revenues.
59-9-63. Joint bond issue; powers and duties of counties and municipalities.
59-9-65. Issuance of bonds and obligations for dredging channels and industrial site preparation.

Sec.	
59-9-67.	Reclamation of submerged lands and tidelands; conveyance of lands by state; lease or sale of lands and facilities by county.
59-9-69.	Additional general obligation bonds.
59-9-71.	Dredging and site preparation; fund.
59-9-73.	Negotiability and taxation of bonds issued under Sections 59-9-65 through 59-9-75.
59-9-75.	Proceedings for issuance and validation of bonds issued under Sections 59-9-65 through 59-9-75; applicability of debt limitations.
59-9-77.	Construction of chapter.
59-9-79.	Validation of bonds.
59-9-81.	Applicability of debt limitation.
59-9-83.	Exemption from taxation of bonds; negotiability.
59-9-85.	Action to enforce contractual rights.

§ 59-9-1. Declaration of public policy.

It is hereby declared that the public policy of the State of Mississippi is to encourage the expansion and development of Mississippi's harbors and ports.

HISTORY: Codes, 1942, § 7605-26; Laws, 1956, ch. 199, § 26.

Cross References — Development of harbor facilities by county bridge and park commission, see §§ 55-7-1 et seq.

County and municipal harbors, see §§ 59-7-1 et seq.

County port and harbor commission, see §§ 59-11-1 et seq.

Harbor improvements by coast counties, see §§ 59-13-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The provisions of title 59, chapter 9 do not give the Jackson County Port Authority authority to contract for residential wastewater treatment. Hunter, August 15, 1996, A.G. Op. #96-0504.

Development authorities or commissions created under §§ 59-9-1 et seq. and §§ 59-11-1 et seq. do not have the powers or authorities granted by the Municipal Airport Law, §§ 61-5-1 et seq. Genin, Jan. 9, 2004, A.G. Op. 03-0584.

RESEARCH REFERENCES

ALR.

State regulation of maritime pilots under 46 USCS § 211. 35 A.L.R. Fed. 525.

Am. Jur.

70 Am. Jur. 2d, Shipping §§ 79-81.

§ 59-9-3. Construction of chapter.

(1) This chapter shall be construed liberally and broadly to effectuate the purposes set out herein and wide latitude and discretion shall be vested in the public authorities charged with the exercise of the powers and duties conferred upon them by this chapter, except as in the chapter otherwise expressly limited.

(2) Nothing in this chapter shall be construed as repealing or altering existing laws affecting ports, and this chapter is to be considered as supplementary and cumulative. The grant of powers to the board of supervisors of

such county, the county port authority, the governing authorities of the municipality in which the port of entry is located, and the port commission, where granted herein by reference to existing statutes, shall incorporate such statutes herein seriatim, and the subsequent amendment or repeal of such statutes shall not limit or rescind the powers and authority hereby conferred unless expressly so provided in such amending or repealing statute.

(3) The enumeration of any specific rights and powers contained in this chapter, where followed by general powers, shall not be construed in a restrictive sense, but rather in as broad and comprehensive a sense as possible to effectuate the purposes of this chapter.

(4) A county development commission shall have all rights, duties and powers vested upon a county port authority by this chapter.

HISTORY: Codes, 1942, §§ 7605-02, 7605-06, 7605-25, 7605-26; Laws, 1956, ch. 199, §§ 2, 6, 25, 26; Laws, 1958, ch. 226, §§ 2, 6; Laws, 1960, ch. 345, § 1; Laws, 1961, 2nd Ex. Sess. ch. 3, § 1; Laws, 1962, ch. 394, § 1; Laws, 1967, Ex. Sess. ch. 5, § 1; Laws, 1968, ch. 433, § 1; Laws, 1971, ch. 462, § 1, eff from and after passage (approved March 30, 1971).

Editor's Notes — Laws of 1971, ch. 462, § 2, provides as follows:

"Section 2. Nothing in this act shall affect or defeat any claim, cause of action, suit, appeal, right or interest in and to lands or beach-front property on the Gulf of Mexico which existed prior to the effective date of this act, whether or not such claim, cause of action, suit, appeal, right or interest in and to such lands or interest therein shall have begun on the date on which this act becomes effective, or shall thereafter be begun. It is expressly provided that every right, title or interest in lands held by any person or groups of persons which front on the Gulf of Mexico in the State of Mississippi shall continue in full force and effect to the same extent as if this act had not become law."

Cross References — General powers of board of supervisors, see § 19-3-41.

Additional powers granted certain port authorities, see § 59-5-31.

OPINIONS OF THE ATTORNEY GENERAL

A county development commission has the authority to budget for travel, lodging, meals and other marketing expenses directly related to recruiting industrial and business prospects to the county. Allen, Oct. 15, 2004, A.G. Op. 04-0450.

§ 59-9-5. Definitions.

(1) The term "industrial operations" as used in this chapter shall include but not be limited to any and all enterprises, the operation of which will aid in the development of fisheries, shipyard operations, commerce, navigation or shipping in the port, as well as all forms of manufacturing enterprises, tourism enterprises, and service enterprises.

(2) Wherever the words "county port authority" appear in this chapter, such words shall be deemed to be identical in meaning and in context with the words "county development commission."

HISTORY: Codes, 1942, §§ 7605-02, 7605-12; Laws, 1956, ch. 199, §§ 2, 12; Laws, 1958, ch. 226, § 2; Laws, 1962, ch. 394, § 1; Laws, 1967, Ex. Sess. ch. 5, § 5; Laws, 1988, ch. 359, § 1, eff from and after June 1, 1988.

Cross References — County port and harbor commission, see §§ 59-11-1 et seq.

JUDICIAL DECISIONS

1. "Industrial operations."

A concrete producer is a manufacturing enterprise and therefore qualifies as an industrial operation as contemplated by the language of the statute. Coast Materials Co. v. Harrison County Dev. Comm'n, 730 So. 2d 1128, 1998 Miss. LEXIS 632 (Miss. 1998).

OPINIONS OF THE ATTORNEY GENERAL

Even though a county development commission would not be authorized to donate funds directly to a particular group for tourism purposes, expending funds in developing land for a tourism is allowable if a factual determination is made that the endeavor constitutes a tourism enterprise. Crane, Apr. 18, 2003, A.G. Op. #03-0144.

§ 59-9-7. Creation of county port authority or development commission; composition; jurisdiction.

Any county in the State of Mississippi bordering on the Mississippi Sound or the Gulf of Mexico in which county there is or may hereafter be located a municipality having a harbor or port of entry where commodities are exported to foreign nations, and where there is or may hereafter be maintained a channel and/or harbor or port to a depth of not less than twenty (20) feet, and where the board of supervisors of such county shall find and determine that public necessity and convenience requires the same, as evidenced by a resolution adopted and entered on the official minutes of such board, shall have a port authority to be known as the county port authority, but in any such county having four (4) incorporated municipalities therein, such county port authority shall be called and known as the development commission of such county. The county port authority shall be composed of seven (7) resident citizens of such county, who shall be qualified electors therein, but in any such county where a county development commission has been created, such county development commission shall be composed of twelve (12) resident citizens of such county, who shall be qualified electors therein. Such county port authority or county development commission shall have jurisdiction over the ports, terminals, harbors, channels, and passes leading thereto, and all vessels, boats, and wharves, common carriers and public utilities therein, using the same within the county, and not under the jurisdiction of any municipal port commission and exclusive of the jurisdiction of the port commission of any municipality in which a port of entry is located. But by joint resolutions adopted by the governing authorities of the county and the municipality, such county port authority or county development commission may be vested with joint and concurrent jurisdiction over all or any part of said port of entry, or the channels, harbors, or passes leading thereto, outside of the corporate limits of such municipality, and within such county.

HISTORY: Codes, 1942, § 7605-01; Laws, 1956, ch. 199, § 1; Laws, 1958, ch. 226, § 1; Laws, 1991, ch. 314, § 1, eff from and after July 1, 1991.

Cross References — Compensation and duties of county patrolmen in counties coming under this chapter, see §§ 45-7-41 et seq.

Harbor developments by county bridge and parks commission, see §§ 55-7-1 et seq.

Control of county port commission over certain harbors, see § 59-7-7.

County port commission, see § 59-7-407.

§ 59-9-9. Appointment, oath, bond, and terms of office of members.

A county port authority shall be appointed as follows: two (2) members shall be appointed by the Governor, and shall be qualified electors of the county and of the municipality in which the port of entry is located; five (5) members shall be appointed by the board of supervisors of such county; each supervisors district bordering on the Mississippi Sound or the Gulf of Mexico shall have at least one (1) member on such county port authority.

The members of any county port authority created as a county development commission shall be appointed as follows: Two (2) members shall be appointed by the Governor, and shall be qualified electors of the county and of a municipality which is a port of entry in such county; five (5) members shall be appointed, one (1) each by the governing authorities of each incorporated municipality in such county, and five (5) members shall be appointed by the board of supervisors of such county; each supervisors district bordering on the Mississippi Sound or Gulf of Mexico shall have at least one (1) member on such county development commission. After the expiration of the terms in effect on July 1, 1995, the members of the county development commission for Harrison County, Mississippi, which are appointed by the Governor shall be qualified electors of the county.

Before entering upon the duties of the office, each member of such county port authority or county development commission shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi and shall give bond to be approved by the board of supervisors of such county in the sum of Five Thousand Dollars ($5,000.00) conditioned upon the faithful performance of his duties. Such bond shall be made payable to the county, and in case of a breach thereof, suit may be brought thereon upon the relation of the county for the benefit of the county port authority or county development commission. The members of such county port authority or county development commission shall hold office for a term of four (4) years from the date of their appointment and qualification, and until their successor or successors shall be appointed and qualify as set out herein. The members of any municipal port commission shall be eligible for appointment as members of any county port authority or county development commission, but they shall not be paid additional compensation for attending any joint meeting of the county port authority or county development commission and the municipal port commission.

Notwithstanding any provisions of this chapter to the contrary, successors to members of a county development commission whose terms expire in the calendar year 1962, shall be appointed as follows: two (2) members by the

Governor for a two-year term, four (4) members by the mayor of each incorporated municipality in the county for a three-year term; and five (5) members by the board of supervisors for a term of four (4) years. Succeeding appointments to the county development commission shall be for a term of four (4) years or until their successors are appointed.

HISTORY: Codes, 1942, § 7605-02; Laws, 1956, ch. 199, § 2; Laws, 1958, ch. 226, § 2; Laws, 1962, ch. 394, § 1; Laws, 1991, ch. 314, § 2; Laws, 1995, ch. 432, § 1, eff from and after July 1, 1995.

Cross References — Who may administer oaths, see §§ 11-1-1, 25-1-9.

Increase in membership of county port authority upon issuance of bonds, see § 59-5-29.

OPINIONS OF THE ATTORNEY GENERAL

Makeup of County Development Commission is governed by Miss. Code Section 59-9-9; this section increased number of municipal appointments to five; initial appointment of fifth commissioner expires simultaneously with remaining four municipal commissioners, rather than four years from date of the appointment. Crane, Apr. 14, 1993, A.G. Op. #93-0223.

Term "governing authorities" in Section 59-9-9 means mayor and City Council; therefore, board of aldermen for City of Long Beach was authorized to make appointment to fill position on County Development Commission, subject to Mayor's veto. Laird, Feb. 9, 1994, A.G. Op. #93-1005.

It would violate the nepotism statute for an individual to be appointed to a county development commission by a county board of supervisors whose membership includes the individual's step-uncle. Allen, July 18, 2003, A.G. Op. 03-0340.

§ 59-9-11. Organization; meetings.

When the members of a county port authority or county development commission shall have been appointed and shall have qualified as set out herein, they shall meet at the regular meeting place of the board of supervisors of such county, after giving at least five days' notice of the time and place of such meeting by publication in any newspaper published in the county seat of such county. At such meetings they shall elect a president and a secretary, who shall be members of the county port authority or county development commission, and adopt such rules as may govern the time and place for holding subsequent meetings, regular and special, not inconsistent with the provisions of this chapter.

HISTORY: Codes, 1942, § 7605-03; Laws, 1956, ch. 199, § 3; Laws, 1958, ch. 226, § 3.

§ 59-9-13. Compensation of members.

Each member of any county port authority or county development commission created under the provisions of this chapter shall receive per diem compensation in the amount provided by Section 25-3-69 for each day engaged in attendance of meetings of the county port authority or county development commission or engaged in other duties of the county port authority or county development commission, not to exceed one hundred twenty (120) in any one (1) year, and shall receive their actual traveling expenses, to be audited and allowed by the county port authority or county development commission.

HISTORY: Codes, 1942, § 7605-05; Laws, 1956, ch. 199, § 5; Laws, 1958, ch. 226, § 5; Laws, 1962, ch. 394, § 2; Laws, 1974, ch. 456; Laws, 1984, ch. 445, § 1, eff from and after passage (approved April 27, 1984).

OPINIONS OF THE ATTORNEY GENERAL

Since the compensation of port authority commissioners is limited by this section, any participation in the county group health insurance program by the commissioners would have to be funded solely by the individual commissioners. Hunter, Aug. 13, 2004, A.G. Op. 04-0364.

A member of the Harrison County Development Commission may decline to claim per diem compensation and reimbursement of expenses or any other type of compensation, and, if he does so, will avoid a violation of the nepotism statute by the appointing authority. Bennett, Aug. 22, 2003, A.G. Op. 03-0418.

§ 59-9-15. General powers and duties of authority or commission; director; additional clerical assistance; commission may enter into joint venture for construction and operation of facilities under jurisdiction of commission.

The duties and powers of a county port authority or county development commission shall be the same, as to matters within their jurisdiction, as those set forth and prescribed by law, and as the same may be amended from time to time, relating to the duties and powers of a municipal port commission. The board of supervisors, on recommendation of the county port authority or county development commission, may appoint a county port director. The salary of the county port director shall be subject to the approval of the board of supervisors of such county, and the county port director so appointed may be the port director employed by the port commission of the municipality, in which case the board of supervisors of such county and the governing authorities of the municipality may jointly agree on pro rata payments toward the salary and expenses of such port director. The members of such county port authority or county development commission and the county port director shall be public officers within the meaning and the intent of Section 97-11-19, Mississippi Code of 1972. The clerk of the board of supervisors of any county which has appointed a county port authority or county development commission is authorized to employ such additional clerical assistance as may be necessary or required in view of the additional duties imposed upon the board by this chapter, but no employee shall receive a salary of more than Thirty-six Hundred Dollars ($3600.00) per annum.

In addition to the general powers and duties of a county port commission or county development commission, a county port commission or development commission may enter into joint ventures or community alliances with private entities or other county port commissions or county development commissions to construct and operate any facilities under the jurisdiction of such commissions.

HISTORY: Codes, 1942, § 7605-04; Laws, 1956, ch. 199, § 4; Laws, 1958, ch. 226, § 4; Laws, 1960, ch. 346; Laws, 2001, ch. 327, § 1, eff from and after July 1, 2001.

Editor's Notes — Section 97-11-19 referred to in this section was repealed by Laws of 1983, ch. 469, § 10, effective from and after July 1, 1983.

Cross References — Duties and powers of municipal port commission, see § 59-1-9.

Duties of port director, see § 59-1-27.

Additional powers granted certain county port commissions, see § 59-5-31.

Duties of county port commission, see §§ 59-7-129, 59-7-307.

Powers and duties of county port and harbor commission, see § 59-11-7.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors has the discretionary authority, on recommendation of the county development commission, to appoint an executive director of the commission. Meadows, May 6, 2004, A.G. Op. 04-0051.

The salary or a subsequent change in the salary of the executive director of a county development commission is subject to approval by a board of supervisors. If the appointment was for a term extending beyond the term of the appointing board, the successor board may, at its option, renounce the appointment as well as the salary for the position. Meadows, May 6, 2004, A.G. Op. 04-0051.

Section 59-9-27, which requires the board of supervisors to approve the employment of professional or technical assistance that exceeds $25,000, does not apply to the employment of the executive director of the county development commission. Meadows, May 6, 2004, A.G. Op. 04-0051.

§ 59-9-17. General powers and authority of county; validation of prior acts.

The board of supervisors of any county in which there has been created a county port authority or county development commission as provided in this chapter, acting for and on behalf of the county, is hereby given the authority through the county port authority, county development commission, or such other agencies as hereinafter may be provided by law, to engage in work of internal improvement or promoting, developing, constructing, maintaining and operating harbors, channels and other navigation projects within the county and the waters adjacent thereto and to develop land for industrial operations in connection therewith, and shall have the power to acquire, purchase, install, lease, construct, manufacture, own, maintain, repair, equip, use, control and operate wharves, piers, docks, ways, elevators, compresses, warehouses, roadways, floating dry docks, graving docks, marine railways, tugboats, ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, ship components, systems, parts, fuel, tourism or service facilities and materials required or incidental to any of such purposes; and all other facilities and equipment reasonably necessary or useful in the operation of harbor facilities, and water, air and rail terminals, and such other structures, facilities, lands, property or rights therein needful for the convenient use of the same in the aid of commerce, and to deepen any part of said harbor and to extend, enlarge or add to the same by dredging in any direction, including inland, and to acquire land or any estate therein needed to carry out the purposes of this chapter in connection therewith. Such harbor facilities, tourism facilities, and service facilities, except those privately owned as a part of or in connection with industrial operations, shall always be and remain under the management and control of such county through the county port authority or county development commission or such other governing agency or agencies, as may hereinafter be provided by law, or under the joint management and control of such county and the municipality in which the port of entry is located, acting through the county port authority or county development commission and municipal port commission. All prior purchases, acceptances and other acquisitions of land or estates therein by the county in conformity with the purposes of this chapter, whether or not heretofore specifically authorized by law are hereby ratified, approved and confirmed. All acts, orders and resolutions of the board of supervisors of the county and the county port authority or county development commission adopted prior to October 20, 1961, which find and adjudicate the public necessity of acquiring lands for the purposes stated in this chapter, are hereby ratified, approved and confirmed; and such acts, orders and resolutions of the board of supervisors and the county port authority or county development commission shall, without any further acts upon the part of the board of supervisors of the county or the county port authority or county development commission, have the same force and effect as if adopted pursuant to this chapter.

HISTORY: Codes, 1942, § 7605-06; Laws, 1956, ch. 199, § 6; Laws, 1958, ch. 226, § 6; Laws, 1960, ch. 345, § 1; Laws, 1961, 2nd Ex. Sess. ch. 3, § 1; Laws, 1967, Ex. Sess. ch. 5, § 1; Laws, 1968, ch. 433, § 1; Laws, 1971, ch. 462, § 1; Laws, 1988, ch. 359, § 2, eff from and after June 1, 1988.

Editor's Notes — Laws of 1971, ch. 462, § 2, provides as follows:

"Section 2. Nothing in this act shall affect or defeat any claim, cause of action, suit, appeal, right or interest in and to lands or beach-front property on the Gulf of Mexico which existed prior to the effective date of this act, whether or not such claim, cause of action, suit, appeal, right or interest in and to such lands or interest therein shall have begun on the date on which this act becomes effective, or shall thereafter be begun. It is expressly provided that every right, title or interest in lands held by any person or groups of persons which front on the Gulf of Mexico in the State of Mississippi shall continue in full force and effect to the same extent as if this act had not become law."

Cross References — Taking private property for public use, see Miss. Const. Art. 3, § 17.

Power of eminent domain, see §§ 11-27-1 et seq.

General powers of board of supervisors, see § 19-3-41.

Additional powers granted certain port commissions, see § 59-5-31.

County and municipal harbors, see §§ 59-7-1 et seq.

Issuance of bonds for establishment and development of industrial parks, in connection with port or harbor purposes, see § 59-7-105.

OPINIONS OF THE ATTORNEY GENERAL

A county, through its port authority, may make rules and regulations to assure compliance with a comprehensive plan in respect to an industrial park, and such rules and regulations may control the use and access of roads inside the park to the extent that such roads are not public roads, but there is no requirement that the board of supervisors approve the rules and regulations established by the port authority; the rules and regulations may restrict the unfettered access by the general public and, if someone enters the park after being instructed not to enter, or remains in the park after being instructed to leave, a charge of trespass or of disorderly conduct, or both, may lie, the determination of which must be based on the specific facts presented. Genin, Jr., March 27, 1998, A.G. Op. #98-0151.

The Hancock County Port and Harbor Commission, should it find consistent with fact and encompass such findings in an order spread upon its minutes, that the dredging of Little Lake Pass in Louisiana is necessary to keep the passes open to the commission's industrial park, may advertise for bids and contract for the dredging of such pass; however, such contract might be subject to the jurisdiction of the appropriate federal and Louisiana authorities. Genin, April 2, 1999, A.G. Op. #99-0142.

Even though a county development commission would not be authorized to donate funds directly to a particular group for tourism purposes, expending funds in developing land for a tourism is allowable if a factual determination is made that the endeavor constitutes a tourism enterprise. Crane, Apr. 18, 2003, A.G. Op. 03-0144.

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Eminent Domain § 45.

§ 59-9-19. Additional powers and authority of county.

The board of supervisors of any county in which there has been created a county port authority or county development commission as provided in this chapter, acting through its county port authority or county development commission, shall have the following additional powers and authority:

(a) To set aside or lease all or portions of said harbor facilities, wharves, docks, sheds, warehouses, elevators, compresses, floating dry docks, graving docks, marine railways, tugboats or any necessary or useful improvements for special purposes for a term not exceeding ninety-nine (99) years.

(b) To sell, lease or otherwise dispose of tourism facilities, service facilities, shipyards, shipbuilding facilities, machinery and equipment, dredges, facilities and land acquired for industrial or harbor operations to individuals, firms or corporations, public or private, for industrial operations on such terms and conditions and with such safeguards as will best promote and protect the public interest, and they are hereby authorized to transfer possession and/or title to any part of all of such facilities and lands by deed, lease, contract or other customary business instrument; however, no such lease of land or facilities acquired for industrial operations shall be executed for a term in excess of ninety-nine (99) years from its date, and before the execution of the same any such deed, conveyance, lease, contract or other disposition shall be authorized by the affirmative vote of at least two-thirds

(⅔) of the membership of such port authority or development commission by order or resolution entered on its minutes, which order or resolution shall set forth the substantial terms of such deed, conveyance, lease, contract or other disposition.

In the letting of contracts and in the advertisement for bids thereon, for the development, construction, repair, maintenance or operation of any structures, facilities and lands required pursuant to any of the provisions of this chapter, the board of supervisors and the county port authority shall comply with all of the requirements of the general laws of the State of Mississippi governing the advertisement for bids and the letting of contracts by county boards of supervisors. In the event title to any such lands under jurisdiction of the port authority or development commission is in the name of the county, no such transaction shall be consummated until and unless the same be authorized by proper resolution of the port authority or development commission and of the county, in which event the county shall join the port authority or development commission in the execution of such instrument. Any such sale or lease may be executed upon such terms and conditions and for such monetary rental or other consideration as may be found adequate and approved by the county port authority or county development commission and the board of supervisors in orders or resolutions authorizing the same. Any covenants and obligations of the lessee or purchaser to make expenditures in determined amounts and within such time or times for improvements to be erected on the land by such lessee or purchaser and to conduct thereon industrial operations in such aggregate payroll amounts and for such period of time or times as may be determined and defined in such lease or conveyance, and to give preference in employment where practicable to qualified residents of the port of entry and of the county and/or state in which such port is situated, shall, if included in such lease or conveyance, constitute and be deemed sufficient consideration for the execution of any such lease or conveyance in the absence of a monetary rental or other considerations; any such lease may contain reasonable provisions giving the lessee the right to remove its or his improvements upon termination of the lease. Where the rentals provided in the lease will be sufficient to fully retire the cost of the particular facility or where the monetary consideration for a deed is sufficient to fully repay the cost of land acquired for industrial operations described in said deed, contracts for construction, repairs, maintenance and operation of the facility or for the sale of the land, may be negotiated and consummated without the necessity of advertising and obtaining competitive bids therefor. Such county, acting through the port authority or development commission, shall have the right to reclaim submerged lands for such purposes and shall also have the right to acquire by eminent domain proceedings, purchase or otherwise, any land or estate therein or property and rights that may be necessary for the purposes of this chapter, provided that land acquired for industrial operations by eminent domain shall be leased or shall be sold only with such provisions in the deed or lease as shall ensure that the use of the land shall be beneficial to the carrying out of the purposes of this chapter and the promotion of commerce through said port. The county, acting through the port authority or development commission, shall have no authority or power to acquire without the consent of the owner thereof any property operated or used for port, harbor or industrial operations, or for such purposes as the county, acting through the port authority or development commission, is authorized to acquire and use such property for, where such property has been sold or leased by the county, acting through the port authority or development commission, to any person, firm or corporation for industrial operations as provided in this chapter. In the exercise of eminent domain, the county, acting through the port authority or development commission, shall determine the amount and character of the land or estate therein thus to be acquired and the public necessity for such exercise and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of said county in making such determination and said county, acting through the port authority or development commission, shall have all powers and authority vested in persons or corporations having the right of eminent domain by Sections 11-27-1 through 11-27-49 and all other statutes pertinent thereto.

(c) To accept assurances and other agreements from persons, firms and corporations who are benefited by any action of the port authority pursuant to this chapter, including agreements to save the county harmless on account of any assurances given by the county to the United States of America or any agency thereof, including the Secretary of the Army, and to enter into contracts with such persons, firms or corporations relative to the future development and use of property owned by such persons, firms or corporations.

(d) To obligate the county by contract with persons, firms and corporations owning or agreeing to purchase property in the area benefited by any action of the port authority under the provisions of this chapter for the construction, development, improvement or expansion of channels and other navigation projects by the county at its expense and the continued maintenance and operation thereof by the county at its expense for a period of time not to exceed ninety-nine (99) years, or so long as any such person, firm or corporation continues to use said property for industrial operations.

(e) To obtain liability insurance as deemed appropriate for the needs of the port authority or development commission. If liability insurance is in effect, the port authority or development commission may be sued by anyone affected to the extent of such insurance carried; however, immunity from suit is waived only to the extent of such liability insurance carried, and a judgment creditor shall have recourse only to the proceeds or right to proceeds of such liability insurance.

(f) To invest funds credited to the county development commission. A county development commission is vested with authority to designate depositories of its funds and to deposit its funds in insured, interest-bearing accounts or securities guaranteed by the good faith of the United States

Treasury. All funds in excess of ninety (90) days' operating expenses, to the extent practicable, shall be invested in United States Treasury bills, interest-bearing accounts insured by the Federal Deposit Insurance Corporation, or other securities of the United States Government including United States Treasury bills, notes and bonds, federal agency securities, mortgage-backed securities guaranteed as to repayment of principal by the United States Government, or repurchase agreements and mutual funds invested in obligations of the United States Government or its agencies and repurchase agreements fully collateralized by such obligations.

HISTORY: Codes, 1942, § 7605-06; Laws, 1956, ch. 199, § 6; Laws, 1958, ch. 226, § 6; Laws, 1960, ch. 345, § 1; Laws, 1961, 2nd Ex. Sess. ch. 3, § 1; Laws, 1967, Ex. Sess. ch. 5, § 1; Laws, 1968, ch. 433, § 1; Laws, 1971, ch. 462, § 1; Laws, 1979, ch. 348; Laws, 1988, ch. 359, § 3; Laws, 1990, ch. 570, § 15; Laws, 1992, ch. 352, § 1; Laws, 1994, ch. 356, § 1, eff from and after July 1, 1994.

Cross References — Public contracts generally, see §§ 31-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

Where the objectors to the sale of land in an industrial park by a county to a purchaser argued that the county sold the land to the purchaser for below market value, the argument failed, as Miss. Code Ann. § 59-9-19 anticipated that property sold by the county development commission located in the industrial park within the jurisdiction of the commission could be sold in the absence of monetary rental or other consideration, provided that there were covenants and obligations on the purchaser to make expenditures or construct improvements; a special warranty deed imposed a covenant that the property was to be used as an aggregate distribution facility within one year and imposed restrictions upon its use otherwise. Citizens Ass'n for Responsible Dev., Inc. v. Conrad Yelvington Distribs., 859 So. 2d 361, 2003 Miss. LEXIS 597 (Miss. 2003).

Where the objectors to the sale of land in an industrial park by a county to a purchaser argued that the county and county development commission had not provided a sufficient explanation for their decisions in approving the transactions, the argument failed, as there was no statutory requirement under Miss. Code Ann. § 59-9-19 that the commission and county board of supervisors had to make specific findings with regard to the sale of the land. Citizens Ass'n for Responsible Dev., Inc. v. Conrad Yelvington Distribs., 859 So. 2d 361, 2003 Miss. LEXIS 597 (Miss. 2003).

This statute prohibits a county and its port authority from reacquiring by eminent domain property previously sold by them if that property is being used or operated for industrial purposes. The county and its port authority were not prohibited from reacquiring land which was no longer being used for such purposes. H. K. Porter Co. v. Board of Supervisors, 324 So. 2d 746, 1975 Miss. LEXIS 1597 (Miss. 1975).

§ 59-9-21. Restoration of sand beaches; leasing for development of port and related industrial facilities.

(1) In addition to the powers and authority elsewhere conferred by this chapter, the board of supervisors of any county in which there has been created a county port authority or county development commission, acting through its county port authority or county development commission, shall have the power

and authority to rebuild and restore to its previous width and height any sloping beach or sand beach heretofore pumped in or dredged to protect a public highway extending along the beach or shore of any body of tidewater which is exposed to or in danger of damage by water driven against the shore by storms or hurricanes, as heretofore authorized by Section 1 of Chapter 319 enacted at the 1924 Regular Session of the Mississippi Legislature; and to let by competitive bids a contract therefor in the manner and by the procedure set out in Section 59-9-27. In addition to bonds heretofore issued pursuant to Chapter 462, Laws of 1971, the board of supervisors may issue and sell full faith and credit bonds of said county in the manner and by the procedure set out in this chapter in an amount not exceeding Four Million Dollars ($4,000,000.00), subject to the limitations and conditions of this chapter, and may apply thereon any funds now or hereafter made available to the use or pledge of the said development commission, and to dredge, fill in and reclaim submerged lands and tidelands belonging to the State of Mississippi.

(2) It is hereby declared that the leasing for the development of port and related industrial facilities of the following described submerged lands and tidelands belonging to the State of Mississippi in an area immediately adjacent to the present port and industrial complex known as the Bayou Casotte Area in Jackson County, Mississippi, will serve a higher public interest in accordance with the purposes of this section and with the public policy of this state as set forth in Section 49-27-3, said property being more particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter of Section 20, Township 8 South, Range 5 West and at grid coordinates N242,489.57 feet, E606,331.52 feet; runs thence North 89 degrees 10′ 22″ East along the Mid-Section Line of Section 21, Township 8 South, Range 5 West, 661.48 feet to a point at grid coordinates N242,499.12 feet, E606,992.93 feet; runs thence South 0 degrees 27′ 25″; East 1,621.39 feet to a two inch iron pipe with cap, set in concrete at grid coordinates N240,877.78 feet, E607,005.86 feet, said point being the Southeast corner of the property conveyed to Corchem, Inc., by H. K. Porter Company, Inc., by instrument dated December 31, 1971, recorded in Deed Book 419, page 182, Land Deed records of Jackson County, Mississippi, and being the point of beginning; runs thence South 0 degrees 27′ 25″ East, 1,018.61 feet to a point on the South line of said Section 21, said point being North 89 degrees 18′ 22″ East, 650.33 feet, of the Southwest corner of said Section 21; runs thence South 0 degrees 27′ 25″ East, 2,306.58 feet, to a two inch iron pipe with cap, set in concrete at grid coordinates N237,552.70 feet, E607,032.37 feet; thence continues South 0 degrees 27′ 25″ East 173 feet, more or less, to the mean water line of the Mississippi Sound, at scaled grid coordinates N237,379 feet, N607,033 feet; runs thence South 0 degrees 27′ 25″ East 1,379 feet, more or less, to the intersection of the N236,000 grid line, at grid coordinates N236,000.00 feet, E607,044.75 feet; runs thence North 90 degrees 00′ 00″ West, with the N236,000 grid line, 3,305 feet, more or less, to the mean water line of the Mississippi Sound on the East side of a Spoil Island, at scaled grid coordinates N236,000 feet, E603,740 feet; runs thence across said Spoil Island, North 90 degrees 00′ 00″ West, 195 feet, more or less, to the mean water line of the Mississippi Sound on the West side of said Spoil Island at scaled grid coordinates N236,000 feet, E603,545 feet; runs thence North 90 degrees 00′ 00″ West, with the N236,000 grid line 2,140 feet, more or less, to the East Harbor Line of Bayou Casotte at grid coordinates N236,000.00 feet, E601,404.38 feet; runs thence with the East Harbor Line of Bayou Casotte North 0 degrees 03′ 00″ West, 4,056.52 feet to a point at grid coordinates N240,056.52 feet, E601,400.84 feet; thence continues with the East Harbor Line of Bayou Casotte North 6 degrees 34′ 54″ East, 746.48 feet to a point that is South 89 degrees 10′ 22″ West of the point of beginning and at grid coordinates N240,798.08 feet, E601,486.40 feet; runs thence North 89 degrees 10′ 22″ East, 780 feet, more or less, to the mean water line of the Mississippi Sound at scaled grid coordinates N240,809 feet, E602,266 feet; runs thence North 89 degrees 10′ 22″ East, 60 feet, more or less, to a two inch iron pipe with cap, set in concrete at grid coordinates N240,810.22 feet, E602,326.35 feet; thence continues North 89 degrees 10′ 22″ East, along the South boundary of Corchem, Inc., property 4,680.00 feet to the point of beginning and contains 623.7 acres, more or less. The real property herein described is situated in the South one half of Section 20, Southwest Quarter of the Southwest Quarter of Section 21, West one half of the Northwest Quarter of Fractional Section 28, and Fractional Section 29, all being located in Township 8 South, Range 5 West, Jackson County, Mississippi.

LESS AND EXCEPT any portion of the following described property which is not owned or otherwise held in trust by the State of Mississippi:

Commencing at the Northeast corner of the Southeast Quarter of Section 20, Township 8 South, Range 5 West and at grid coordinates N242,489.57 feet, E606,331.52 feet; runs thence North 89 degrees 10′ 22″ East along the Mid-Section line of Section 21, Township 8 South, Range 5 West, 661.48 feet to a point at grid coordinates N242,499.12 feet, E606,992.93 feet; runs thence South 0 degrees 27′ 25″ East, 1621.39 feet to a two inch iron pipe with cap, set in concrete, at grid coordinates N240,877.78 feet, E607,005.86 feet, said point being the Southeast corner of the property conveyed to Corchem, Inc., by H. K. Porter Company, Inc., by deed dated December 31, 1971, recorded in Deed Book 419, page 182, Land Deed Records of Jackson County, Mississippi, and the point of beginning; runs thence South 0 degrees 27′ 25″ East, 1,018.61 feet to a point on the South line of said Section 21, said point being 650.33 feet East of the Southwest corner of said Section 21; runs thence South 0 degrees 27′ 25″ East 2,306.58 feet to a two inch iron pipe with cap, set in concrete at grid coordinates N237,552.70 feet, E607,032.37 feet; thence continues South 0 degrees 27′ 25″ East, 173 feet, more or less, to the mean water line of the Mississippi Sound as existed in 1961; runs thence Northwesterly along the said meandering mean water line to a point on the West line of Fractional Section 28, Township 8 South, Range 5 West; thence continues along the meandering mean water line of the Mississippi Sound in a Northwesterly direction to a point on the North line of Fractional Section 29, Township 8 South, Range 5 West; thence continues along said meandering water line of the

Mississippi Sound in a Northwesterly direction to a point that is South 89 degrees 10' 22″ West of the point of beginning; runs thence North 89 degrees 10' 22″ East, 60 feet, more or less, to a two inch iron pipe with cap, set in concrete, at grid coordinates N240,810.22 feet, E602,326.35 feet; thence continues North 89 degrees 10' 22″ East along the South boundary of Corchem, Inc., property, 4,680.00 feet to the point of beginning. The parcel of land herein described is situated in the South one-half of Section 20, the Southwest Quarter of the Southwest Quarter of Section 21, the West one-half of the Northwest Quarter of Fractional Section 28, and Fractional Section 29, all being in Township 8, Range 5 West, Jackson County, Mississippi, and contains 205.4 acres, more or less. Bearings and grid coordinates used in this description refer to the Transverse Mercator Projection for the State of Mississippi East Zone.

(3) It is hereby declared that the leasing or use for commercial fishing purposes, port purposes and for industrial development related thereto of the following described submerged lands and tidelands belonging to the State of Mississippi in an area lying between the East Pascagoula River and Middle River, Jackson County, Mississippi, will serve a higher public interest in accordance with the purposes of this section and with the public policy of this state as set forth in Section 49-27-3, said property being more particularly described as follows:

All that part of the Lowry Island Resurvey, which is bounded on the North by the L & N Railroad Track; on the East by the East Pascagoula River; on the West by Middle River; and on the South by the Mississippi Sound; and also the dredged-up Spoil Island, known as Singing River Island, lying South of the above described land and South of the launching channel South of the lands leased to Litton Ship Systems, Inc., and lying West of the federally maintained dredged channel going from Horn Island Pass to East Pascagoula River; LESS AND EXCEPT, however, that part of said property now owned by Jackson County, Mississippi, and the State of Mississippi and leased to Litton Ship Systems, Inc.

(4) Notwithstanding any provisions of law to the contrary, the county port authority of the county in which such state lands are located is hereby authorized to apply for and secure a lease for a period of not to exceed ninety-nine (99) years of such state lands as may be necessary for the development of commercial fishing, port and related industrial facilities in the aforesaid areas described in subsections (2) and (3) hereof except for the provisions of subsection (5) of this section.

Application for a lease shall be made with the Secretary of State.

Utilization of any and all submerged land and/or tideland shall be in such a manner so as not to obstruct normal navigation of any normal and natural channel. Title to the property shall remain vested in the State of Mississippi.

All oil, gas and other minerals in, on or under said lands leased are hereby specifically reserved unto the State of Mississippi.

The county port authority is hereby authorized to sublease such lands for commercial fishing, port purposes and for industrial development related thereto.

All subleases executed by the county port authority shall be on such terms and conditions, and with such safeguards, as will best promote and protect the public interest. Such subleases shall be submitted to the Secretary of State for approval. Provided, however, that each sublease shall provide that if such property is not utilized within five (5) years, or if commercial fishing, industrial or port usage ceases and such termination continues for a period of two (2) years, the sublease shall terminate and all rights thereunder shall revert to the county. However, if such nonutilization for a period of five (5) years or cessation of use for a period of two (2) years shall be caused, suspended, delayed or interrupted by act of God, fire, war, rebellion, scarcity of water, insurrection, riot, strike, scarcity of labor, differences with employees, failure of a carrier to transport or furnish facilities for transportation; or as a result of some order, rule or regulation of any federal, state, municipality or other governmental agency; or as the result of failure of the sublessee to obtain any required permit or certificate; or as the result of any cause whatsoever beyond the control of sublessee, the time of such delay or interruption shall not be counted against sublessee in determining such periods of five (5) years or two (2) years. All subleases shall be for a fair and adequate consideration and the compensation and revenues therefrom may be retained by the state or shared with the county in a fashion approved by the Secretary of State for port purposes and industrial development. Such compensation and revenues may be pledged by the county to payment of any bonds required to be issued to finance such commercial fishing, port and industrial development, including a United States Navy home port. However, in the event bonds are issued as provided herein, upon the discharge and payment of the principal and interest of such bonds, any additional revenue generated shall be retained by the state or shared with the county for port purposes and industrial development in a fashion approved by the Secretary of State.

(5)(a) Notwithstanding any provisions of law to the contrary, upon selection of Jackson County as a site for a home port for a Surface Action Group and upon review of the contract authorized in Section 1 of Chapter 812, Laws of 1985, as amended, the Secretary of State is hereby authorized to lease for a period not to exceed ninety-nine (99) years or sell if required by the United States Navy or the United States Department of Defense such state lands as may be necessary for the development by the United States Navy or the United States Department of Defense for a home port and related facilities for a naval squadron in the aforesaid area described in subsection (3) hereof. It is hereby declared that the leasing or sale to the United States Navy or the United States Department of Defense of any of the aforesaid area described in subsection (3) hereof will provide a major stimulus to employment in Jackson County and the state and will serve a higher public interest in accordance with the purposes of this section and with the public policy as set forth in Section 49-27-3, and such lease or sale may be made for nominal consideration.

(i) If the subject property is to be sold to the United States Navy or to the United States Department of Defense, the instrument of conveyance, which shall be by quitclaim deed, shall include the following:

1. A reservation of all oil, gas and other minerals in, on and under the subject property subject to a provision that no exploration, exploitation or development of any minerals shall be undertaken without prior written consent of the United States Navy; which consent shall not be unreasonably withheld;

2. A reverter which shall be created, declared, imposed and resolved in said quitclaim deed according to the terms of which said title to the subject property shall automatically revert to the state. The reversion shall automatically occur if a. construction of the home port facilities has not commenced within two (2) years of the conveyance of the subject property or b. thereafter, if the subject property is no longer required by the Navy for a home port or related facilities and the Secretary of the Navy shall so determine and promptly notify the State of Mississippi of said determination. In the event of said determination, the subject property as improved shall automatically revert to the State of Mississippi, and the state may pay to the United States of America the fair market value of the Navy's improvements within five (5) years from the date of reversion, less the fair market value of the state and/or county-financed facilities; however, the county financed facilities shall revert to Jackson County unless the state finances the same or unless otherwise agreed upon by Jackson County and the state. If the State of Mississippi elects not to pay to the United States of America the fair market value of the Navy's improvements within said period of five (5) years, then said property and all facilities financed by the State of Mississippi and financed by Jackson County shall automatically revert to the United States of America.

(ii) If the subject property is to be leased to the United States Navy or to the United States Department of Defense, the lease agreement shall contain a termination clause which shall declare that the lease shall be rescinded if either of the conditions described in subsection (5)(a)(i)2 of this section occur. If the condition described in subsection (5)(a)(i)2b. of this section occurs, the United States Navy and the United States Department of Defense shall be allowed two (2) years from the date of termination or utilization of the area leased in which to remove any improvements or facilities thereon, excluding any county financed facilities, which shall revert to Jackson County unless otherwise agreed upon by Jackson County and the state. All references to payment for county financed facilities upon reversion shall also apply to the state if it finances the same.

(b) Provided, however, if revenue bonds are to be issued by the State Bond Commission under Section 1 of Chapter 500, Laws of 1985 [See Editor's Note below], then the lands referred to in paragraph (a) of this subsection shall not be sold to the United States Navy or to the United States Department of Defense but may only be leased and such lease may contain an option to purchase when such bonds are retired. In this case an additional clause shall be included in the lease agreement to provide that upon termination of the lease agreement prior to the retirement of all revenue bonds issued under Section 1 of Chapter 306, Laws of 1987, such payments by the United States Navy or the United States Department of Defense as are necessary to retire such revenue bonds shall become due and payable on the date of the termination of the lease.

(6) This section is to be considered as supplementary and cumulative and nothing in this section shall be construed as repealing existing laws, or as repealing or amending any options, leases, deeds, contracts, agreements or legal instruments heretofore entered into by the board of supervisors of such county, the county port authority, the governing authorities of the municipality in which the port of entry is located, or the port commission. The grant of powers to the board of supervisors of such county, the county port authority, the governing authorities of the municipality in which the port of entry is located, and the port commission, where granted herein by reference to existing statutes, shall incorporate such statutes herein seriatim, and the subsequent amendment or repeal of such statutes shall not limit or rescind the powers and authority hereby conferred unless expressly so provided in such amending or repealing statute.

HISTORY: Codes, 1942, § 7605-06; Laws, 1956, ch. 199, § 6; Laws, 1958, ch. 226, § 6; Laws, 1960, ch. 345, § 1; Laws, 1961, 2nd Ex. Sess. ch. 3, § 1; Laws, 1967, Ex. Sess. ch. 5, § 1; Laws, 1968, ch. 433, § 1; Laws, 1971, ch. 462, § 1; Laws, 1979, ch. 514; Laws, 1982, ch. 445; Laws, 1984, ch. 445, § 2; Laws, 1985, ch. 500, § 2; Laws, 1987, ch. 306, § 2, eff from and after passage (approved February 27, 1987).

Editor's Notes — Laws of 1971, ch. 462, referred to in this section, is codified as §§ 59-9-3, 59-9-17, 59-9-19, 59-9-21, 59-9-23, 59-9-35, and 59-9-85.

Laws of 1985, ch. 812, § 1, referred to in this section, is classified as a local or private law, and is not codified.

Laws, 1987, ch. 306, § 1, referred to in this section, is classified as a state bond law, and is not codified.

Laws, 1985, ch. 500, § 1, referred to in this section, provides as follows:

"In addition to the authority granted in House Bill 617, Regular Session of 1985 (Chapter 812); Senate Bill 2879, Regular Session of 1985 (Chapter 458); and House Bill 1142 (Chapter 879), Regular Session of 1985, and upon the execution of a lease agreement as provided in subsection (5) of Section 59-9-21, the State Bond Commission is hereby authorized and empowered to issue revenue bonds of the State of Mississippi for the purpose of constructing a surface action group base, and for the purpose of widening the East Pascagoula River channel to the extent that funds to be provided by the City of Pascagoula, Jackson County and the Jackson County Port Authority to widen such channel are not provided for such purpose. Such bonds shall not exceed the principal amount of Two Hundred Million Dollars ($200,000,000.00) and shall be secured by the lease agreement with the United States Navy or the United States Department of Defense, and such other additional security as may be required by the State Bond Commission and agreed to by the United States Navy or the United States Department of Defense. No such bonds shall be issued unless the lease is executed for a term sufficient to retire the bonds to be issued hereunder and it is clearly set forth therein that such bonds will be paid by the United States Government or an agency thereof and that there is no provision in the federal statutes which allows the termination of such lease by nonappropriation of funds for such purpose.

"(2) Such bonds shall bear date or dates, may be in such form and denominations, may be in fully registered form, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding forty (40) years from the date thereof, may bear interest at such rate or rates, may be payable at such time or times and at such place or places within or without the State of Mississippi, may be redeemable prior to maturity at such time or times and upon such terms, with or without premium, and shall be substantially in such form, all as shall be determined by resolution of the State Bond Commission; however, such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972. The State Bond Commission shall sell such bonds on sealed bids at public sale, and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale shall be made at a price less than ninety-seven percent (97%) of par value plus accrued interest to date of delivery of the bonds to the purchaser. All interest accruing on such bonds so issued shall be payable semiannually or annually.

"No bond issued hereunder shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified on the bonds; all bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on bonds issued hereunder shall be payable semiannually or annually, except that the first interest payment may be for any period not exceeding one (1) year. No interest payment on bearer bonds shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than sixty percent (60%) of the highest interest rate specified for the same bond issue. Each interest rate specified in any bid must be in multiples of either one-eighth of one percent (⅛ of 1%) or one-tenth of one percent ($^{1/10}$ of 1%). If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds.

"Notice of the sale of any such bonds shall be published at least one (1) time, the first of which shall be made not less than ten (10) days prior to the date of sale, and shall be so published in one or more newspapers having a general circulation in the City of Jackson and in one or more other newspapers or financial journals with a large national circulation, to be selected by the State Bond Commission.

"Such bonds shall be signed by the Chairman of the State Bond Commission, or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, attested by the Secretary of the State Bond Commission. The interest coupons, if any, to be attached to such bonds may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds, who were in the office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser, or had been in office on the date such bonds may bear.

"(3) All bonds issued under this section shall be limited obligations of the State of Mississippi, the principal of, redemption premium, if any, and interest on which shall be payable solely from revenues derived for lease payments as provided in subsection (1) of this section and from such other funds as may be made available for such purpose by the lessee. Bonds and interest coupons, if any, issued under this section shall never constitute an indebtedness of the State of Mississippi within the meaning of any state constitutional provision or statutory limitation, and shall never constitute nor give rise to a pecuniary liability of the State of Mississippi or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each such bond. All bonds issued under this section and all interest coupons applicable thereto, if any, shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source.

"(4) The bonds issued under this section and the income therefrom shall be exempt from all taxation in the State of Mississippi.

"(5) The revenue bonds authorized under this section may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified or required by this section.

"The bonds authorized under this section may be validated in the Chancery Court of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds. The necessary papers for such validation proceedings shall be transmitted to the State Bond Commission, and the required notice shall be published in a newspaper published in the City of Jackson, Mississippi.

"(6) The proceeds of the bonds issued under this section shall be deposited in a special fund hereby created in the State Treasury to be known as the 'Surface Action Group Base Construction Fund'. The expenditure of such funds shall be under the direction of the State Bond Commission and shall be paid by the State Treasurer upon warrants issued by the Auditor of Public Accounts, which warrants shall be issued upon requisitions signed by the Chairman of the State Bond Commission."

Laws, 1971, ch. 462, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, cause of action, suit, appeal, right or interest in and to lands or beach-front property on the Gulf of Mexico which existed prior to the effective date of this act, whether or not such claim, cause of action, suit, appeal, right or interest in and to such lands or interest therein shall have begun on the date on which this act becomes effective, or shall thereafter be begun. It is expressly provided that every right, title or interest in lands held by any person or groups of persons which front on the Gulf of Mexico in the State of Mississippi shall continue in full force and effect to the same extent as if this act had not become law."

Cross References — Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

Additional powers granted certain port commissions, see § 59-5-31.

§ 59-9-23. Establishment and development of industrial parks.

In addition to the powers and authority elsewhere conferred in this chapter, the board of supervisors of any county in which there has been created a county port authority or county development commission, acting through its county port authority or county development commission, may establish industrial parks with defined boundaries to develop and utilize lands for industrial operations and in such development may provide for water, sewage, drainage or similar facilities, or transportation, power or communication facilities which are incidental to the use of the lands as industrial parks. The creation of all such parks purported to be so established prior to May 2, 1976, as would comply with the provisions of this section is hereby ratified and declared valid. Transportation facilities herein authorized may include railroad lines and bridges extending not more than twenty (20) miles from such industrial parks, locomotives and other equipment to be used only in said county, but if any part of any such facility shall be in another county, only with consent of such county expressed by resolution of its board of supervisors and its county port authority or county development commission. Transportation facilities owned by a county hereunder may be operated by said county or others on behalf of such county or may be leased to others by said county; the Public Service Commission shall have no jurisdiction over such transportation facilities or the financing thereof, nor, so long as said county regulates such rates, the rates charged for the use of such transportation facilities. Revenue bonds, but not general obligation bonds, may be issued to pay the cost of such transportation, power or communication facilities, under Section 59-9-41, or under any other law now or hereafter available, and any such facilities may be sold or leased as hereinafter provided. In connection with an industrial park any such county, through its county port authority or county development commission, may establish a comprehensive plan, may make rules and regulations to assure compliance with such plan, and may set and collect rates and charges for services furnished by such industrial park.

HISTORY: Codes, 1942, § 7605-06; Laws, 1956, ch. 199, § 6; Laws, 1958, ch. 226, § 6; Laws, 1960, ch. 345, § 1; Laws, 1961, 2nd Ex. Sess. ch. 3, § 1; Laws, 1967, Ex. Sess. ch. 5, § 1; Laws, 1968, ch. 433, § 1; Laws, 1971, ch. 462, § 1; Laws, 1976, ch. 416, § 1; Laws, 1988, ch. 359, § 4, eff from and after June 1, 1988.

Editor's Notes — Laws of 1971, ch. 462, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, cause of action, suit, appeal, right or interest in and to lands or beach-front property on the Gulf of Mexico which existed prior to the effective date of this act, whether or not such claim, cause of action, suit, appeal, right or interest in and to such lands or interest therein shall have begun on the date on which this act becomes effective, or shall thereafter be begun. It is expressly provided that every right, title or interest in lands held by any person or groups of persons which front on the Gulf of Mexico in the State of Mississippi shall continue in full force and effect to the same extent as if this act had not become law."

Cross References — Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

Industrial parks and districts generally, see §§ 57-5-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The board of supervisors of Jackson County, acting by and through the Jackson County Port Authority, may extend water and sewer lines of the Sunplex Light Industrial Park beyond the boundaries of the park. Hunter, July 11, 1997, A.G. Op. #97-0409.

A county, through its port authority, may make rules and regulations to assure compliance with a comprehensive plan in respect to an industrial park, and such rules and regulations may control the use and access of roads inside the park to the extent that such roads are not public roads, but there is no requirement that the board of supervisors approve the rules and regulations established by the port authority; the rules and regulations may restrict the unfettered access by the general public and, if someone enters the park after being instructed not to enter, or remains in the park after being instructed to leave, a charge of trespass or of disorderly conduct, or both, may lie, the determination of which must be based on the specific facts presented. Genin, Jr., March 27, 1998, A.G. Op. #98-0151.

The Board of Supervisors of Jackson County acting through the Jackson County Port Authority is empowered to acquire the interests of the Mississippi Band of Choctaw Indians in the water and sewer lines and rights of way along Highway 57 in Jackson County and as consideration for such acquisition, may contract with the Mississippi Band of Choctaw Indians to provide water and sewer services of a value or amount not to exceed the fair market value of the water and sewer lines and rights of way. Hunter, June 11, 1999, A.G. Op. #99-0279.

§ 59-9-25. Contracts for construction, maintenance, etc., of ports, facilities, etc.

The board of supervisors of such county, acting through its county port authority, and the governing authorities of the municipality in which the port of entry is located, acting through its port commission, may, in their discretion and acting jointly, enter into a contract or contracts for the development, construction, repair, maintenance or operation of any seaports, wharves, piers, docks, ways, elevators, compresses, warehouses, tourism facilities, service facilities, roadways, floating dry docks, graving docks, marine railways, tugboats, and water, air and rail terminals and other structures, facilities and lands needful for the convenient use of the same in the aid of commerce, or any other property at the port of entry under the joint jurisdiction of said county port authority and such port commission under such terms and conditions as both bodies may deem best economically to the city and county wherein the port of entry is located. In the letting of contracts, and in advertisement for bids thereon, for the development, construction, repair, maintenance or operation of any structures, facilities and lands acquired pursuant to any of the provisions of this chapter, the said board of supervisors, the governing authorities of the said municipality, the county port authority and the municipal port commission shall comply with all the requirements of the general laws of the State of Mississippi governing the advertisement for bids and letting of contracts by county boards of supervisors. However, where the rentals provided in a lease will be sufficient to fully retire the cost of the particular facility, contracts for the construction, repair, maintenance and operation of the facility may be negotiated and consummated with the lessee of the facility without the necessity of advertising and obtaining competitive bids therefor. The county port authority is given full power and authority to employ engineers, attorneys and other professional and technical assistance in and about the operations, development and advancement of harbors and ports of such county, and to pay reasonable compensation therefor, such employment and compensation therefor to be approved by the board of supervisors of such county. The county port authority, and the port commission of the port of entry are jointly vested with the power and authority herein conferred, subject to the approval of the board of supervisors and the governing authorities of the municipality of all joint undertakings of such county port authority and port commission.

HISTORY: Codes, 1942, § 7605-07; Laws, 1956, ch. 199, § 7; Laws, 1960, ch. 345, § 2; Laws, 1988, ch. 359, § 5, eff from and after June 1, 1988.

Cross References — Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

OPINIONS OF THE ATTORNEY GENERAL

The authority of the Tombigbee River Valley Water Management District to contract for dredging services with the Army Corps of Engineers is not subject to public bidding laws. Applewhite, Oct. 12, 2001, A.G. Op. #01-0560.

§ 59-9-27. Jurisdiction and duty of port authority over improvements; powers and duties of development commission.

(1) All improvements constructed by the board of supervisors of any county under the provisions of this chapter or under the provisions of any local and private act conferring upon the board of supervisors the authority to engage in port, harbor or channel improvements or development, shall be under the jurisdiction of and operated and maintained by such county port authority. It shall be the duty of such county port authority, from time to time, to make recommendations to the board of supervisors of such county concerning expenditures, maintenance, operation and development of the harbors or port facilities of such county, and to submit annually to such board of supervisors a proposed budget for the operation and maintenance of such harbors and port facilities, which recommendations and budget shall be subject to the approval of the board of supervisors.

(2) In any county having a county development commission, all improvements constructed, including acquisition of land authorized under the provisions of this chapter, shall be constructed, operated and maintained by the county development commission. It shall be the duty of such county development commission, from time to time, to make recommendations to the board of supervisors of such county concerning expenditures, maintenance, operation and development of the harbors or port facilities of such county and the tourism and service facilities authorized under this chapter, and to submit annually to such board of supervisors a proposed budget for the operation and maintenance of such harbors and port facilities and tourism and service facilities, which recommendations and budget shall be subject to the approval of the board of supervisors. The said development commission shall have, and is hereby given, the authority and power to enter into contracts for the performance of all work, including acquisition of land, authorized under this chapter and to expend funds made available therefor, provided that all such expenditures by such commission shall be audited by the county auditor, who shall monthly report such expenditures to the board of supervisors. In letting contracts, and in advertising for bids therefor, the development commission shall comply with all the requirements of the general laws of the State of Mississippi covering the advertisement for bids and the letting of contracts by county boards of supervisors and such commission shall have full power and authority to employ engineers, attorneys, real estate brokers and appraisers, and other professional and technical assistance in and about the operations, development and advancement of the harbors and ports of such county and the tourism and service facilities authorized under this chapter and to pay reasonable compensation or commission therefor. Any capital expenditures or proposals to employ professional or technical assistance which does not exceed Twenty-five Thousand Dollars ($25,000.00) may be undertaken by the com-

mission without approval of the board of supervisors and any capital expenditure or proposal to employ professional and technical assistance which exceeds the sum of Twenty-five Thousand Dollars ($25,000.00) shall not be undertaken except upon approval by the board of supervisors by appropriate order spread upon its minutes.

HISTORY: Codes, 1942, § 7605-08; Laws, 1956, ch. 199, § 8; Laws, 1960, ch. 211, § 1; Laws, 1988, ch. 359, § 6; Laws, 1998, ch. 364, § 1, eff from and after July 1, 1998.

Cross References — Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

Submission of budget requests to legislative budget office, see § 27-103-127.

Public contracts generally, see §§ 31-1-1 et seq.

Application of this section to contracts for restoring and rebuilding beaches, see § 59-9-21.

Harbor improvements by coast counties, see §§ 59-13-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The requirement of this section that employment by a county development commission of professional and technical assistance for sums in excess of $25,000 must be approved by the board of supervisors does not apply to the salary/compensation paid to the executive director, but would deal with such issues as in the employment of outside engineering firms, etc. Meadows, May 6, 2004, A.G. Op. 04-0051.

The requirement of this section that the board of supervisors approve the employment of professional or technical assistance that exceeds $25,000, does not apply to the employment of the executive director of the county development commission. Meadows, May 6, 2004, A.G. Op. 04-0051.

A county board of supervisors may contract with a private CPA firm to conduct a performance and compliance audit of the county development commission, but only in so far as such audit does not duplicate the audits performed by the chancery clerk. Meadows, Aug. 23, 2004, A.G. Op. 04-0408.

§ 59-9-29. Jurisdiction over lands.

Any county port authority or county development commission created under the provisions of this chapter is hereby vested with full jurisdiction and control of any and all lands lying within or adjacent to any river, bay or natural lake, which are below the mean high tide mark, and which lands lie within or adjacent to any port or harbor within the jurisdiction of such county port authority or county development commission. Any such county port authority or county development commission is hereby authorized to reclaim any and all such lands by filling, dredging, or other means, to utilize, lease, sell, or dispose of same for the development and operation of the port to the same extent it is now or may hereafter be authorized to utilize its other facilities. Any such county port authority or county development commission, pursuant to resolutions adopted by the port commission and the governing body of the municipality in which the port of entry is located, may exercise joint and concurrent jurisdiction of any such lands described in such resolutions within the jurisdiction of the port commission of the port of entry, and outside of the corporate limits of such municipality, and may exercise the above powers jointly with such port commission as to such lands.

Under any such state-owned lands, if any, hereinabove turned over to the county port authority or county development commission, all oil, gas and other mineral rights are hereby reserved unto the State of Mississippi.

HISTORY: Codes, 1942, § 7605-09; Laws, 1956, ch. 199, § 9; Laws, 1958, ch. 226, § 7; Laws, 1967, Ex. Sess. ch. 5, § 2, eff from and after passage (approved June 29, 1967).

§ 59-9-31. Lease or sale of unused lands for industrial purposes; authority and limitations.

In the event any part of such lands, as are described in Section 59-9-29, are not used for port purposes, and navigation, commerce and fishing will not be impeded thereby, such county port authority may lease or sell the same to individuals, firms, or corporations, public or private, for industrial operations, on such terms and conditions and with such safeguards as will best promote and protect the public interest, and they are hereby authorized to transfer possession of, lease or sell any part or all of such lands by lease, deed, contract, or other customary business instrument. However, no such lease shall be executed for a term in excess of ninety-nine years from its date, and before execution of same any such lease, deed, or contract or other disposition shall be authorized by the affirmative vote of at least two-thirds (⅔) of the membership of such county port authority by order or resolution entered upon its minutes, which order or resolutions shall set forth the substantial terms of such lease, deed, contract, or other disposition. No such transaction shall be consummated until and unless the same be authorized by proper resolution of the board of supervisors, who shall join in the execution of any such instrument.

HISTORY: Codes, 1942, § 7605-10; Laws, 1956, ch. 199, § 10; Laws, 1967, Ex. Sess. ch. 5, § 3, eff from and after passage (approved June 29, 1967).

Cross References — Industrial developments generally, see §§ 57-1-1 et seq.
Additional powers granted certain port commissions and authorities, see § 59-5-31.

§ 59-9-33. Lease or sale of unused lands for industrial purposes; terms and conditions.

Any lease, sale, contract, or other disposition of any or all lands referred to in Section 59-9-29 may be made upon such terms and conditions and for such consideration as may be found to be adequate by the county port authority, and approved by the board of supervisors in orders or resolutions authorizing same, and the covenants and obligations of the lessee or grantee to make expenditures in determined amounts, and within such time or times, for improvements to be erected on the land by such lessee or grantee, and to conduct thereon industrial operations in such aggregate payroll amounts and for such period of time or times as may be determined and defined in such lease, deed, contract or other disposition, shall constitute and be deemed sufficient consideration for the execution of any such lease, deed, contract or other disposition. Any such lease granted for industrial or harbor operations under paragraphs (a) and (b) of Section 59-9-19 may contain an option to buy at any time and/or upon termination thereof, and shall, however, contain reasonable provisions for the termination of the lease or reversion of possession of the land and all improvements made by lessee or grantee to the facility, including personal property, unless previously agreed to, in the event of default on the part of the lessee or grantee of his or its obligation or covenants under such agreement.

HISTORY: Codes, 1942, § 7605-11; Laws, 1956, ch. 199, § 11; Laws, 1967, Ex. Sess. ch. 5, § 4, eff from and after passage (approved June 29, 1967).

§ 59-9-35. Exemption from ad valorem taxes of certain lease contracts; time limit; lessee required to pay taxes after expiration of exemption.

Any contract for the lease of any development for the manufacture of ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, ship components, systems, parts, fuel and materials required or incidental to any of such purposes to be constructed out of the proceeds of bonds to be issued under the provisions of this chapter may be exempt from ad valorem taxation except state ad valorem taxation and school district ad valorem taxation. The time of such exemption shall not exceed a total of ten (10) years, which shall commence from the date of the contract. Any request for an exemption must be made in writing before the date of the contract.

The lessee shall be required, after the expiration of any exemption granted hereunder, to pay ad valorem taxes on the leasehold notwithstanding that title to such development is vested in the county and port authority.

HISTORY: Codes, 1942, § 7605-06, Laws, 1956, ch. 199, § 6; Laws, 1958, ch. 226, § 6; Laws, 1960, ch. 345, § 1; Laws, 1961, 2nd Ex. Sess. ch. 3, § 1; Laws, 1967, Ex. Sess. ch. 5, § 1; Laws, 1968, ch. 433, § 1; Laws, 1971, ch. 462, § 1; Laws, 1990, ch. 502, § 11; Laws, 1992, ch. 518, § 6, eff from and after July 1, 1992.

Editor's Notes — Laws of 1971, ch. 462, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, cause of action, suit, appeal, right or interest in and to lands or beach-front property on the Gulf of Mexico which existed prior to the effective date of this act, whether or not such claim, cause of action, suit, appeal, right or interest in and to such lands or interest therein shall have begun on the date on which this act becomes effective, or shall thereafter be begun. It is expressly provided that every right, title or interest in lands held by any person or groups of persons which front on the Gulf of Mexico in the State of Mississippi shall continue in full force and effect to the same extent as if this act had not become law."

Cross References — Ad valorem taxes generally, see §§ 27-29-1 et seq.

§ 59-9-37. Issuance of bonds and interim certificates.

The board of supervisors of any county in which a county port authority or county development commission has been created pursuant to this chapter is hereby given authority to issue bonds or other obligations of such county in an amount not to exceed twenty percent (20%) of the assessed valuation of such county to provide funds for any purpose or purposes set out in this chapter. Such bonds may be issued at one (1) time or from time to time in such amount or amounts, shall bear such date or dates, shall be of such denomination or denominations, shall be payable at such place or places, shall bear interest at such rate or rates, not exceeding that allowed in Section 75-17-101, Mississippi Code of 1972, shall mature in such amount or amounts and at such time or times, not exceeding twenty (20) years from the date thereof, with or without option of prior payment, and shall be executed in such manner, all as may be determined by the said board of supervisors. The resolution or order adopted by the board of supervisors authorizing said bonds may pledge the sources of revenue authorized under the statutes to pay the principal thereof and interest thereon, and all bonds issued under the one (1) resolution or order may be equally secured and entitled to be paid. In event, however, such board of supervisors elects to delay actual delivery or sale of any part of the bonds so authorized, either until the proceeds thereof are needed, or upon the happening or occurrence of any event or thing, then and in that event the bonds so authorized and any part thereof shall be secured and be entitled to be paid, both as to principal and interest in accordance with the terms and conditions to be fixed and recited in said resolution or order. In anticipation of the issuance of the definitive bonds authorized by this chapter, any such county may issue interim certificates. Such interim certificates shall be in such form, contain such terms, conditions or provisions, bear such date or dates, and evidence such agreement or agreements relating to their discharge by payment or by the delivery of the definitive bonds, as such county, by resolution of its governing body, may determine. Whenever any county shall have issued bonds under this section or Section 59-9-41, a portion of which remains outstanding and unpaid, and the governing authority of such county desires to refund all or any portion of such bonds or to issue additional bonds under this section or Section 59-9-41, for the purpose herein or therein authorized and to consolidate all or any portion of such bonded indebtedness, such governing authority, by resolution or resolutions, may at any time authorize and direct the issuance of bonds. The proceeds of such new bonds shall be used to pay or provide for the payment of, at or prior to maturity, any outstanding and unpaid bonds (including any unpaid accrued interest thereon), and any balance of such proceeds not so utilized shall be used and expended for the purposes authorized by this chapter. In the event that such outstanding bonds, by the terms thereof, are redeemable prior to maturity at the option of such county, then such option of redemption may be exercised in the manner provided in such bonds. Such new bonds shall be issued in like manner and like incidence and shall be payable from the same source or sources and the payment thereof shall be secured in like manner as provided in this section or Section 59-9-41 provided in the case of the issuance of original bonds under this section or under Section 59-9-41. In lieu of selling such portion of such new bonds as may be required to pay or provide for the payment of such outstanding bonds, such new bonds may be issued and delivered in exchange for and upon surrender and cancellation of a like amount of such outstanding bonds.

In addition and supplemental to the rights, duties and powers now or hereafter conferred by law upon counties having created a county port authority or county development commission, such counties are empowered and authorized to issue general obligation bonds of such counties as hereinabove provided, to acquire, establish, construct, develop, improve and maintain revetments, embankments, groins, sea walls, jetties, moles, breakwaters, gates, locks, dams, water basins, reservoirs, aqueducts, canals, water supply and distribution systems or pipelines and easements necessary thereto; and the acquisition, development and improvement of lands and property for any of such purposes. Such counties are further empowered and authorized to enter into contracts, agreements, assurances, or commitments with the United States of America, or any department or agency thereof, the State of Mississippi, or any department, political subdivision or agency thereof, or any person, firm or corporation relating or in connection with any power or duty authorized, imposed, or conferred upon such county by law, and to cooperate with and assist any public body or agency, or bodies or agencies, having jurisdiction of any waterway, port, harbor, or water development program, and to jointly exercise any or all of such powers as a joint operation with any other county or counties. Any such county or any party entering into any contract with any such county shall be entitled to maintain any action in any court of competent jurisdiction against the county or any other party to said contract to enforce any contractual right arising out of any such contract.

General obligation bonds issued under the provision of this section shall be payable from an ad valorem tax which may be levied without limit as to rate or amount upon all taxable property within the county.

HISTORY: Codes, 1942, § 7605-14; Laws, 1956, ch. 199, § 14; Laws, 1958, ch. 226, § 8; Laws, 1962, ch. 395, § 1; Laws, 1980, ch. 439, § 2; Laws, 1981, ch. 462, § 18; Laws, 1982, ch. 434, § 33; Laws, 1983, ch. 541, § 40, eff from and after passage (approved April 25, 1983).

Cross References — County bonds generally, see §§ 19-9-1 et seq.

Ad valorem taxes generally, see §§ 27-29-1 et seq.

Refunding bonds generally, see §§ 31-15-1 et seq.

Authority of municipality to issue bonds for port and harbor purposes, see §§ 59-3-3, 59-7-11, 59-7-309, 59-7-415.

Authority of board of supervisors to issue revenue bonds for purposes set out in this chapter, see § 59-9-41.

Authority of coast county to issue bonds for harbor improvements, see §§ 59-13-5, 59-13-7.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

§ 59-9-39. Attorney's fees for issuance of general obligation bonds.

Attorney's fees for the issuance of any general obligation bonds authorized by the provisions of this chapter shall not exceed for each issue the following schedule:

(1) Up to and including one million dollars ($1,000,000.00), one per cent (1%).

(2) Above one million dollars ($1,000,000.00) and up to and including two million dollars ($2,000,000.00), one half of one per cent (½ of 1%).

(3) Above two million dollars ($2,000,000.00), one fourth of one per cent (¼ of 1%).

HISTORY: Codes, 1942, § 7605-14; Laws, 1956, ch. 199, § 14; Laws, 1958, ch. 226, § 8; Laws, 1962, ch. 395, § 1, eff from and after passage (approved May 26, 1962).

§ 59-9-41. Revenue bonds.

In addition to the authority conferred by Section 59-9-37, the board of supervisors of such county is further authorized, in its discretion, to issue revenue bonds of such county to provide funds for any purpose or purposes set out in this chapter or in Section 59-5-31. Such revenue bonds may be issued upon compliance with Section 59-9-51, and shall not be subject to any limitation as to amount, and shall not be included or computed in the statutory limitations of indebtedness of any such county. Such bonds shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, be payable at such place or places within or without the State of Mississippi, shall mature at such time or times and upon such terms, with or without premium, shall bear such registration privileges and shall be substantially in such form, all as shall be determined by resolution of the board of supervisors of such county. Such bonds shall mature in annual installments beginning not more than five (5) years from date thereof and extending not more than thirty-five (35) years from date thereof. Such bonds shall be signed by the president of the board of supervisors of such county, and the official seal of the county shall be affixed thereto, attested by the clerk of the board of supervisors of such county. The interest coupons, if any, to be attached to such bonds may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officers herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

The revenue bonds issued under the provisions of this section shall be payable solely out of the revenues to accrue from the operation of such project development, improvement or utility systems, and the full faith and credit of the county shall not be pledged therefor, nor shall any ad valorem tax be levied therefor.

HISTORY: Codes, 1942, § 7605-14; Laws, 1956, ch. 199, § 14; Laws, 1958, ch. 226, § 8; Laws, 1962, ch. 395, § 1; Laws, 1976, ch. 416, § 2; Laws, 1985, ch. 477, § 11, eff from and after passage (approved April 8, 1985).

Cross References — Issuance of refunding or additional revenue bonds, see § 59-9-37.

§ 59-9-43. Sale and disposition of proceeds of bonds issued under §§ 59-9-37 and 59-9-41.

The board of supervisors of a county issuing bonds under Sections 59-9-37 and 59-9-41 shall sell such bonds in such manner and for such price as it may determine to be for the best interest of said county, but no such sale (other than revenue bonds) shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. Notice of the sale of any such bonds (other than revenue bonds) shall be published at least one (1) time not less than ten (10) days prior to the date of sale and shall be published in a newspaper published in and having general circulation within such county.

The proceeds of such bonds shall be paid into a special fund or funds in banks qualified to act as depositories for such county. The proceeds of such bonds shall be solely for the purposes for which they were issued, and the redeeming of any outstanding bonds, and shall be disbursed upon order of the board of supervisors of such county, with such restriction, if any, as the resolution authorizing the issuance of the bonds may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the purpose for which they were issued, and the redeeming of any outstanding bonds, unless otherwise provided in the resolution authorizing the issuance of such bonds, additional bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution authorizing the issuance of bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which the bonds were issued, the surplus shall be paid into the fund established for the payment of the principal of and the interest on such bonds.

HISTORY: Codes, 1942, § 7605-14; Laws, 1956, ch. 199, § 14; Laws, 1958, ch. 226, § 8; Laws, 1962, ch. 395, § 1; Laws, 1976, ch. 416, § 3; Laws, 1990, ch. 570, § 16, eff from and after July 1, 1990.

Editor's Notes — Laws of 1990, ch. 570, § 20, effective July 1, 1990, provides as follows:

"(1) Any attorney's fees paid as the result of the issuance of bonds under this act shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of bonds under this act shall be subject to negotiation but in no event shall exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

"(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under this act contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

"(3) In connection with the issuance and sale of bonds authorized under this act, the State Bond Commission shall select a bond attorney or attorneys who are listed in the 'Directory of Municipal Bond Dealers of the United States' and who are members in good standing of the Mississippi State Bar Association and licensed to practice law in the State of Mississippi; however, upon a finding by the commission spread on its official minutes that the public interest will best be served thereby, the commission may select any bond attorney or attorneys listed in the 'Directory of Municipal Bond Dealers of the United States.' "

Cross References — Depositories for funds of local governments, see §§ 27-105-301 et seq.

§ 59-9-45. Negotiability and taxation of bonds issued under §§ 59-3-37 and 59-9-41.

Any bonds, interest coupons, interim certificates or other obligations issued under the provisions of Sections 59-9-37 and 59-9-41 shall have all the qualities and incidents of negotiable instruments under the provisions of the Mississippi Uniform Commercial Code, provided that it shall not be necessary to file any financing statements or continuation statements to perfect or protect the security of the holders of such bonds or to give notice to third parties of the existence of such security. Such bonds and income therefrom shall be exempt from all taxation within the State of Mississippi.

HISTORY: Codes, 1942, § 7605-14; Laws, 1956, ch. 199, § 14; Laws, 1958, ch. 226, § 8; Laws, 1962, ch. 395, § 1; Laws, 1976, ch. 416, § 4, eff from and after passage (approved May 2, 1976).

Cross References — Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

Uniform Commercial Code generally, see §§ 75-1-101 et seq.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Commercial Code §§ 68 et seq.

§ 59-9-47. Proceedings for issuance and validation of bonds issued under §§ 59-9-37 and 59-9-41.

Bonds authorized under the authority of Sections 59-9-37 and 59-9-41 may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this chapter. The bonds authorized under the authority of this chapter may, in the discretion of the board of supervisors of such county, be validated in the chancery court of such county in a manner and with the force and effect provided now or hereafter by Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds.

HISTORY: Codes, 1942, § 7605-14; Laws, 1956, ch. 199, § 14; Laws, 1958, ch. 226, § 8; Laws, 1962, ch. 395, § 1, eff from and after passage (approved May 26, 1962).

§ 59-9-49. Levy of ad valorem tax for operating fund.

In addition and supplemental to the rights, duties and powers now or hereafter conferred by law upon counties having created a county port authority or county development commission, the board of supervisors of any such county, at the request of the county port authority or the county development commission, is authorized and empowered, in its discretion, to levy an ad valorem tax, not to exceed two mills on the dollar of assessed valuation of the taxable property of such county, to provide an operating fund for such county port authority or county development commission.

HISTORY: Codes, 1942, § 7605-14; Laws, 1956, ch. 199, § 14; Laws, 1958, ch. 226, § 8; Laws, 1962, ch. 395, § 1, eff from and after passage (approved May 26, 1962).

Cross References — Ad valorem taxes generally, see §§ 27-29-1 et seq.

§ 59-9-51. County-wide election on issuance of bonds under §§ 59-9-37 and 59-9-41.

A county-wide election shall be held to determine whether such bonds, as are provided for in Sections 59-9-37 and 59-9-41, may be issued. Upon the calling of an election, notice of such election shall be signed by the clerk of the board of supervisors and shall be published once a week for at least three consecutive weeks in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one days prior to the date fixed for such election, and the last publication shall be made not more than seven days prior to such date. If no newspaper is published in such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one days next preceding such election in three public places in such county. Such election shall be held, as far as is practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of such county may vote, and the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND

ISSUE," and the voter shall vote by placing a cross (x) or check (√) opposite his choice on the proposition. When the results of the election on the question of the issuance of such bonds shall have been canvassed by the election commissioners of such county and certified by them to the board of supervisors of such county, it shall be the duty of such board of supervisors to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election shall have voted in favor of the issuance of such bonds, and unless a majority of the qualified electors who voted thereon in such election shall have voted in favor of the issuance of such bonds, then such bonds shall not be issued. Should a majority of the qualified electors who vote thereon in such election vote in favor of the issuance of such bonds, then the board of supervisors of the county may issue such bonds, either in whole or in part, within two years from the date of such election, or within two years after the final favorable termination of any litigation affecting the issuance of such bonds, as such board shall deem best. However, the board of supervisors, in its discretion may, in lieu of the foregoing provisions, adopt a resolution reciting its intention to issue bonds for the purposes authorized by this chapter, stating the amount of bonds proposed to be issued and the date upon which further action will be taken by the board looking toward the issuance of such bonds. Such resolution shall be published once a week for at least three successive weeks in a newspaper published and of general circulation within such county. The first of such publications shall be made at least twenty-one days prior to the date set forth in said resolution as the date upon which further action will be taken by the board, and the last of such publications shall be made not more than seven days prior to such date. If, prior to the date set forth as aforesaid, there shall be filed with the clerk of such board a petition in writing signed by twenty per cent (20%) of the qualified electors of such county, requesting an election on the question of the issuance of such bonds, then such bonds shall not be issued unless authorized by a majority of the qualified electors of such county who vote thereon at an election to be ordered by such board for that purpose. Notice of such election shall be given and such election shall be held and conducted in like manner as provided by law with respect to the submission of other county bond issues in such county. If the proposition so submitted shall fail to receive approval at such election, then no further proceedings for the issuance of such bonds shall be had or taken within a period of six months from and after the date of such election. If, however, no such petition shall be so filed, or if at such election, or subsequent election, such proposition be assented to by a majority of the qualified electors voting thereon, then such board of supervisors shall be authorized to proceed with the issuance of such bonds without further election.

HISTORY: Codes, 1942, § 7605-15; Laws, 1956, ch. 199, § 15; Laws, 1958, ch. 226, § 9; Laws, 1960, ch. 211, § 2.

Cross References — County bond issues generally, see §§ 19-9-1 et seq.
Issuance of revenue bonds upon compliance with this section, see § 59-9-41.

§ 59-9-53. Pledge of county credit and resources for payment of bonds; issuance of revenue bonds.

Such bonds, as are provided for in Section 59-9-37, shall be general obligations of the county, and for the payment of such bonds and the interest thereon, the full faith, credit and resources of such county shall be and are hereby irrevocably pledged, and it shall be the mandatory duty of the board of supervisors of such county annually to levy upon all taxable property within such county an ad valorem tax sufficient to provide for the payment of such bonds as they mature and the interest thereon as it accrues, and the proceeds of such tax levy shall be used for no other purpose. In its discretion, such board of supervisors may also pledge for the payment of such bonds and interest thereon the revenues from facilities operated by the county port authority or county development commission, and any surplus revenues accruing to such county under and by virtue of Sections 65-33-45 and 65-33-47, Mississippi Code of 1972, and not theretofore pledged or hypothecated, and any other surplus funds available to such county from any other source, and not theretofore pledged or hypothecated. The board of supervisors of such county is further authorized, in its discretion, to issue revenue bonds of such county to provide funds for any purpose or purposes set out in this chapter, in the same manner as provided in Section 59-9-57 for the issuance of joint county and municipal revenue bonds, except that the board of supervisors of such county shall be authorized to issue such revenue bonds without the necessity of joint or concurrent action by any municipality, or the necessity of a separate election in such municipality, and such revenue bonds may be secured, in the discretion of the board of supervisors of such county, as provided in the preceding sentence hereof.

HISTORY: Codes, 1942, § 7605-16; Laws, 1956, ch. 199, § 16; Laws, 1958, ch. 226, § 10.

§ 59-9-55. Investment of proceeds of bonds.

Any county which has heretofore issued bonds pursuant to this chapter, is hereby authorized to invest the proceeds of such bonds not needed for immediate use in bonds, notes or other evidences of indebtedness of the United States, but such investments shall not be made except upon the approval of the development commission or port authority.

HISTORY: Codes, 1942, § 7605-16.5; Laws, 1962, ch. 394, § 3, eff from and after passage (approved June 1, 1962).

Cross References — Investment of surplus county funds generally, see § 19-9-29.
Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

§ 59-9-57. Joint development, maintenance, operation, etc., of ports by county port authority or commission and municipality; joint bond issue.

The board of supervisors, acting through its county port authority or county development commission, and the governing authorities of the municipality in which the port of entry is located, acting through its port commission, jointly may negotiate a contract or contracts for the development, construction, repair, and maintenance and operation of seaports, wharves, piers, docks, ways, elevators, compresses, warehouses, roadways and water, air and rail terminals and other structures, facilities and lands needful for the convenient use of the same in the aid of commerce or any other property at the port of entry under the joint jurisdiction of such county port authority or county development commission and such port commission. Such county and municipality, acting through the board of supervisors of such county, and the governing authorities of such municipality are authorized to jointly issue bonds or other obligations to provide funds for such joint undertakings. Such bonds shall be issued as provided in Sections 59-9-37 through 59-9-51, but shall be jointly issued by the board of supervisors of such county and by the governing authorities of the municipality in which the port of entry is located, acting concurrently. Such bonds shall be denominated as port improvement bonds of the county and municipality issuing the same. Unless three-fifths (3/5) of the qualified electors of such county who voted in an election to be held for that purpose shall have voted in favor of the issuance of such bonds and three-fifths (3/5) of the qualified electors of the municipality in which the port of entry is located who voted in an election held for that purpose shall have voted in favor of the issuance of such bonds, then such bonds shall not be issued. Electors of such county who vote in such election vote in favor of the issuance of such bonds and should three-fifths (3/5) of the qualified electors of the municipality in which the port of entry is located who vote in such election vote in favor of the issuance of such bonds, then the board of supervisors of such county and the governing authorities of the municipality in which the port of entry is located may issue such bonds, either in whole or part, within three years after the date of such election or within three years after the termination of any litigation affecting the issuance of such bonds, as such board of supervisors and such governing authorities of the municipality in which the port of entry is located jointly shall deem best. For the payment of such bonds and interest thereon, the board of supervisors of such county and the governing authorities of the municipality in which the port of entry is located, may each pledge the two-mill ad valorem tax authorized by Section 59-9-59, or such part thereof as may be required for the payment of such bonds and interest thereon. Such county and municipality, acting jointly, may also pledge for the payment of such bonds and interest thereon, the revenues from all or any of the facilities operated or to be operated jointly by the county port authority or county development commission and port commission and any revenues accruing to such county and municipality under and by virtue of Section 59-7-1 or

59-7-303, and not theretofore pledged or hypothecated, and any such county may also pledge any surplus funds accruing by virtue of Section 65-33-45 or 65-33-47, Mississippi Code of 1972, and not theretofore pledged or hypothecated, and any other surplus funds available to such county or municipality from any other source. Such bonds shall not be computed as being within any statutory limitation on the issuance of municipal or county bonds, but the two-mill ad valorem tax, or such part thereof as may be necessary for the payment of such bonds and interest thereon, as well as any revenues accruing to such county and municipality under and by virtue of Section 59-7-1 or 59-7-303, and any surplus accruing to such county under Section 65-33-45 or 65-33-47, Mississippi Code of 1972, and not theretofore pledged or hypothecated, shall be irrevocably pledged to the payment of such bonds and interest. Any bonds, or other obligations issued pursuant to this section shall be fully negotiable within the meaning and for all the purposes of the Mississippi Uniform Commercial Code. Whenever any county and municipality, acting jointly, shall have issued bonds hereunder, a portion of which remain outstanding and unpaid, and the governing authorities of such county and municipality, acting jointly, desire to issue additional bonds hereunder for the purposes herein authorized and desire to consolidate all such bonded indebtedness, such governing authorities, by resolution or resolutions, may at any time authorize and direct the issuance of bonds. The proceeds of such new bonds shall be used to take up, pay and redeem all of such outstanding and unpaid bonds at their par value, and the balance of such proceeds shall be used and expended for the purposes authorized by this section. In the event that such outstanding bonds, by the terms thereof, shall be redeemable prior to maturity at the option of such county and municipality, acting jointly, then such option of redemption shall be exercised in the manner provided in such bonds, or in the event that such outstanding bonds, by the terms thereof, be not so redeemable prior to maturity, then the consent of the holder or holders thereof shall first be had and obtained to the end that, in either of said events, the redemption of such outstanding bonds may be accomplished concurrently with the issuance of such new bonds. Such new bonds shall be issued in like manner and like incidence and shall be payable from the same source or sources and the payment thereof shall be secured in like manner as herein provided in the case of the issuance of original bonds hereunder. In lieu of selling such portion of such new bonds as may be required to provide for the redemption of such outstanding bonds, such new bonds may be issued and delivered in exchange for and upon surrender and cancellation of a like amount of such outstanding bonds.

HISTORY: Codes, 1942, § 7605-17; Laws, 1956, ch. 199, § 17; Laws, 1958, ch. 226, § 11.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the eighth sentence by substituting "Section 59-7-1 or 59-7-303" for "Sections 59-7-1 or 59-7-303" both times it appears, and "Section 65-33-45 or 65-33-47" for "Sections 65-33-45 or

65-33-47" both times it appears. The Joint Committee ratified the correction at its August 10, 2022, meeting.

Cross References — Tax on machinery, etc. used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

Sinking funds for municipal ports and harbors, see §§ 59-3-5, 59-7-13, 59-7-427.

County and municipal harbors, see §§ 59-7-1 et seq.

Uniform Commercial Code generally, see §§ 75-1-101 et seq.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Commercial Code §§ 68 et seq.

§ 59-9-59. Joint bond issue; tax levy; collection and disposition of taxes.

Where the issuance of bonds has been authorized as provided by Section 59-9-57, and so long as any of such bonds shall be outstanding the board of supervisors of such county, and the governing authorities of the municipality wherein the port of entry is located in such county, are authorized to levy and collect an ad valorem tax not to exceed two mills, for the joint development, construction, maintenance, repair, or operation of harbor and port facilities authorized by this chapter, which levy shall be collected by the tax collector of such county and the tax collector of the municipality, and shall be deposited into a fund to be designated "the county port fund" and into "the municipal port fund," respectively, and which sums shall be disbursed on the requisition of the county port authority, or the port commission of the municipality, as the case may be, and which funds may also be pledged and used for the payment of bonds issued hereunder.

All taxes collected for the payment of principal of and interest on bonds issued hereunder, shall be credited to a special fund in the county and municipal treasuries of such county and municipality and to be known and designated as the "port bonds interest and sinking fund," and all sums credited to said fund shall be used to pay such bonds as they mature and the interest thereon as it accrues and for no other purpose. It shall be the mandatory duty of such board of supervisors and governing authorities of the municipality to transfer funds from said port funds to the port bonds interest and sinking fund in amounts sufficient to pay maturing principal and accruing interest on bonds issued hereunder. To the extent that funds are thus made available for the payment of such bonds and the interest thereon, the special tax levy herein provided for may be correspondingly reduced.

HISTORY: Codes, 1942, § 7605-18; Laws, 1956, ch. 199, § 18.

Cross References — Sinking fund for bonds issued by state inland port authority, see § 59-17-51.

§ 59-9-61. Joint bond issue; control of facilities; collection and disposition of revenues.

All improvements and facilities constructed pursuant to the joint issuance of bonds by any county and municipality under the authority of Sections 59-9-57 and 59-9-59, shall be maintained and operated under the control of the county port authority and of the port commission. The county port authority and port commission shall, subject to and in accordance with any agreement or agreements as may be made by any such county and municipality with the purchaser or purchasers of bonds or other obligations issued pursuant to this chapter, prescribe, levy, and collect all rents, fees, tolls, revenues and other charges in connection with the use and occupancy of the aforesaid improvements and facilities, and shall pay over all net revenues derived from the operation of such improvements and facilities to any trustee, or successor thereto, established as hereinafter in this chapter provided. Net revenues shall be deemed to be such as may be defined in any agreement or agreements entered into between any such county and municipality and the purchaser or purchasers of any bonds or other obligations issued pursuant to the aforesaid sections.

HISTORY: Codes, 1942, § 7605-19; Laws, 1956, ch. 199, § 19.

§ 59-9-63. Joint bond issue; powers and duties of counties and municipalities.

In connection with the issuance of bonds or other obligations by any county and municipality jointly pursuant to this chapter, such county and municipality, acting jointly, shall have the powers and duties conferred by Sections 59-7-321 and 59-7-323, and all such powers and duties shall apply to and shall be exercised jointly by such county and municipality.

HISTORY: Codes, 1942, § 7605-20; Laws, 1956, ch. 199, § 20.

§ 59-9-65. Issuance of bonds and obligations for dredging channels and industrial site preparation.

(1) In addition to authority to issue bonds or other obligations pursuant to this chapter, the board of supervisors of any county which has a plan approved by the Mississippi Board of Economic Development for the planned development of any port, harbor or waterway, may, with the approval of the Mississippi Board of Economic Development, issue general obligation bonds of such county in the maximum principal amount of two million dollars ($2,000,000.00) to provide funds for the dredging of channel and harbor and preparation of site for the construction or acquisition of ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, dredges, floating drydocks, graving docks, marine railways, tugboats, or any other facilities required or incidental to the construction, outfitting, drydocking or repair of ships or vessels.

(2) Such bonds may be issued at one (1) time or from time to time, in such amount or amounts, shall bear such date or dates, shall be of such denomination or denominations, shall be payable at such place or places, shall bear interest at such rate or rates, not exceeding that allowed in Section 75-17-101, Mississippi Code of 1972, shall mature in such amount or amounts and at such time or times, not exceeding twenty (20) years from the date thereof, with or without option of prior payment, and shall be executed in such manner, all as may be determined by the said board of supervisors. No interest payment due on any bond shall be evidenced by more than one (1) coupon and supplemental coupons will not be permitted; the difference between the highest rate of interest specified for any bond issue shall not exceed the lowest rate of interest specified for the same bond issue by more than one and one-fourth percent (1-¼%). Each interest rate specified in any bid must be in a multiple of one-eighth of one percent (⅛ of 1%) or one-tenth of one percent (⅒ of 1%) and a zero rate of interest cannot be named. Such bonds shall be signed by the president of the board of supervisors of such county, and the official seal of the county shall be affixed thereto, attested by the clerk of the board of supervisors of such county. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of said officer. Whenever any such bonds shall have been signed by the officers herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

(3) Before issuing such bonds, the board of supervisors of such county shall adopt a resolution declaring its intention to issue such bonds, stating the amount of bonds proposed to be issued and the date upon which further action will be taken by the board looking toward the issuance of such bonds. Such resolution shall be published once a week for at least three (3) successive weeks in a newspaper published and of general circulation within such county. The first of such publications shall be made at least twenty-one (21) days prior to the date set forth in said resolution as the date upon which further action will be taken by the board, and the last of such publications shall be made not more than seven (7) days prior to such date. If, prior to the date set forth as aforesaid, there shall be filed with the clerk of such board a petition in writing signed by twenty percent (20%) of the qualified electors of such county, requesting an election on the question of the issuance of such bonds, then such bonds shall not be issued unless authorized by a majority of the qualified electors of such county who vote thereon at an election to be ordered by such board for that purpose. Notice of such election shall be given and such election shall be held and conducted in like manner as provided by law with respect to the submission of other county bond issues in the county. If, however, no such petition shall be so filed, or if at such election, or subsequent election, such

proposition be assented to by a majority of the qualified electors voting thereon, then such board of supervisors shall be authorized to proceed with the issuance of such bonds without further election.

(4) The board of supervisors of such county shall sell such bonds in such manner and for such price as it may determine to be for the best interest of said county, but in no case to exceed the rate of interest hereinabove provided, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. Notice of the sale of any such bonds shall be published at least one (1) time not less than ten (10) days prior to the date of sale and shall be published in a newspaper published in and having general circulation within the county.

(5) The resolution or order adopted by the board of supervisors authorizing the issuance of said bonds shall pledge the sources of revenues authorized under the statutes to pay the principal thereof and interest thereon; and all bonds issued under one (1) resolution or order may be equally secured and entitled to be paid. In addition to such pledge, such bonds shall be payable from an ad valorem tax which may be levied without limit as to rate or amount upon all taxable property within the county.

HISTORY: Codes, 1942, § 7605-23; Laws, 1956, ch. 199, § 23; Laws, 1967, Ex. Sess. ch. 6, §§ 1-3; Laws, 1981, ch. 462, § 20; Laws, 1982, ch. 434, § 34; Laws, 1983, ch. 541, § 41, eff from and after passage (approved April 25, 1983).

Editor's Notes — Section 57-1-2 provides that the term "Board of Economic Development" shall mean the "Department of Economic and Community Development".

Cross References — Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

§ 59-9-67. Reclamation of submerged lands and tidelands; conveyance of lands by state; lease or sale of lands and facilities by county.

(1) For the purposes set out in subsection (1) of Section 59-9-65, the board of supervisors of such county, acting by and through the county port authority, and with the supervision and approval of the Mississippi Agricultural and Industrial Board, shall have the power to dredge, fill in and reclaim submerged lands and tidelands belonging to the State of Mississippi; and the state land commissioner, with the approval of the attorney general and the governor, is hereby authorized and empowered to convey such reclaimed submerged lands and tidelands to such county and to issue the state's patent therefor, but all oil, gas and other minerals in, on or under said lands are hereby specifically reserved unto the State of Mississippi. Such county, acting through its county port authority, shall have the further power to develop and utilize such lands for any of such purposes, provided, however, that no normal or natural channel shall be obstructed so as to interfere with the normal navigation therein.

(2) The board of supervisors of such county, acting jointly with the county port authority, and with the approval of the Mississippi Agricultural and Industrial Board, shall have the power to lease such lands, for a term not in excess of ninety-nine years from the date of such lease, or to sell or otherwise dispose of such land to the State of Mississippi, or to individuals, firms or corporations, public or private, for industrial operations, on such terms and conditions and with such safeguards as will best promote and protect the public interest, and they are hereby authorized to transfer possession and/or title to any part or all of such lands by deed, lease, contract, or other customary business instrument.

(3) Any facilities constructed or acquired for use on such lands under the provisions of Section 59-5-11, including, but not limited to machinery or equipment, may be leased for a term not in excess of ninety-nine years from the date of such lease, or sold, or otherwise disposed of to the State of Mississippi or to individuals, firms or corporations, public or private, for industrial operations, on such terms and conditions, with such safeguards as will best promote and protect the public interest, and subject to the limitations set out in Section 59-5-11, and the board of supervisors of such county, acting jointly with the county port authority, and with the approval of the Mississippi Agricultural and Industrial Board, is authorized to transfer possession and/or title to any part, or all of such facilities, machinery or equipment by deed, lease, contract, or other customary business instrument.

HISTORY: Codes, 1942, § 7605-23; Laws, 1956, ch. 199, § 23; Laws, 1967, Ex. Sess. ch. 6, §§ 1-3, eff from and after passage (approved June 29, 1967).

Editor's Notes — Section 7-11-4 provided that the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Department of Economic and Community Development".

Cross References — Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

Reclamation of tidelands, see §§ 59-1-17 et seq.

§ 59-9-69. Additional general obligation bonds.

In addition to the authority set out in subsection (1) of Section 59-9-65, the board of supervisors of such county may issue general obligation bonds of such county in the additional maximum principal amount of five million dollars ($5,000,000.00), to provide funds for any purposes authorized by Sections 59-9-17 through 59-9-23. Such bonds shall be issued as provided in subsections (2), (3), (4) and (5) of Section 59-9-65, Section 59-9-73, and subsection (2) of Section 59-9-75.

HISTORY: Codes, 1942, § 7605-23; Laws, 1956, ch. 199, § 23; Laws, 1967, Ex. Sess. ch. 6, §§ 1-3, eff from and after passage (approved June 29, 1967).

§ 59-9-71. Dredging and site preparation; fund.

(1) The Mississippi Agricultural and Industrial Board shall assist and supervise the dredging of channel and harbor and preparation of site for the construction of ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, dredges, floating drydocks, graving docks, marine railways, tug boats, or any other facilities required or incidental to the construction, outfitting, drydocking or repair of ships or vessels as contemplated by Sections 59-9-65 and 59-9-67. All sums of money received or obtained by the agricultural and industrial board under the provisions of Sections 59-9-65 through 59-9-75, by appropriation or otherwise, shall be paid into the state treasury and shall constitute a fund to be known as the "agricultural and industrial dredging and site preparation fund." All expenditures shall be paid therefrom by the state treasurer on warrant of the auditor of public accounts; and said auditor shall issue his warrant upon requisition signed by the director and the secretary of the agricultural and industrial board.

(2) To the extent that funds may be available, the agricultural and industrial board shall join with any board of supervisors acting under authority of subsection (1) of Section 59-9-65 in contracting for the work contemplated by said Sections 59-9-65 and 59-9-67, and shall pay from the "agricultural and industrial dredging and site preparation fund" eighty per cent (80%) of the cost of any such project not to exceed four million dollars ($4,000,000.00) for any one county board of supervisors. The agricultural and industrial board shall require such safeguards and controls for the proper accomplishment of such projects as shall be deemed appropriate. However, the said agricultural and industrial board shall observe all procedures, regulations and requirements of law with regard to public contracts and the letting thereof under the B.A.W.I. acts.

(3) If the program provided by Sections 59-9-65 through 59-9-75 is terminated or discontinued for any reason in the future, all moneys in the "agricultural and industrial dredging and site preparation fund," after payment of any outstanding costs in connection with any project undertaken, shall be transferred to the general fund of the state treasury on written certification of the director of the agricultural and industrial board that this program has been discontinued or terminated by said agricultural and industrial board, citing the statutory authority therefor.

HISTORY: Codes, 1942, § 7605-23; Laws, 1956, ch. 199, § 23; Laws, 1967, Ex. Sess. ch. 6, §§ 1-3, eff from and after passage (approved June 29, 1967).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Department of Economic and Community Development".

Cross References — Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

§ 59-9-73. Negotiability and taxation of bonds issued under Sections 59-9-65 through 59-9-75.

All bonds and interest coupons issued under the provisions of Sections 59-9-65 through 59-9-75 shall be and are hereby declared to have all the qualities and incidents of negotiable instruments under the provisions of the Mississippi Uniform Commercial Code and in exercising the powers granted by said sections, the board shall not be required to and need not comply with the provisions of the Uniform Commercial Code. Such bonds and income therefrom shall be exempt from all taxation within the State of Mississippi.

HISTORY: Codes, 1942, § 7605-23; Laws, 1956, ch. 199, § 23; Laws, 1967, Ex. Sess. ch. 6, §§ 1-3, eff from and after passage (approved June 29, 1967).

Cross References — Uniform Commercial Code, see §§ 75-1-101 et seq.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Commercial Code §§ 68 et seq.

§ 59-9-75. Proceedings for issuance and validation of bonds issued under Sections 59-9-65 through 59-9-75; applicability of debt limitations.

(1) Sections 59-9-65 through 59-9-75, without reference to any other statute, shall be deemed to be full and complete authority for the issuance of such bonds by such county, and no proceedings shall be required for the issuance of such bonds other than those provided for and required herein, and the limitations of Sections 59-9-37 through 59-9-49, shall not be applicable to the bonds issued under the provisions of Sections 59-9-65 through 59-9-75 nor shall such bonds be included or computed in the statutory limitations of indebtedness of any such county, and all the necessary powers to be exercised by the board of supervisors of such county in order to carry out the provisions of Sections 59-9-65 through 59-9-75, are hereby conferred.

(2) The bonds authorized under the authority of Sections 59-9-65 through 59-9-75 may, in the discretion of the board of supervisors of such county, be validated in the chancery court of such county in a manner and with the force and effect provided now or hereafter by Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds.

HISTORY: Codes, 1942, § 7605-23; Laws, 1956, ch. 199, § 23; Laws, 1967, Ex. Sess. ch. 6, §§ 1-3, eff from and after passage (approved June 29, 1967).

§ 59-9-77. Construction of chapter.

This chapter, without reference to any other statute, shall be deemed full and complete authority for the issuance and sale of bonds as herein provided, and shall be construed as additional and alternative methods therefor, and none of the present restrictions, requirements, conditions, or limitations of law shall be applicable to the issuance and sale of bonds under this chapter, except as herein otherwise expressly limited, and no proceedings shall be required for the issuance of such bonds other than those provided for and required herein, and all powers necessary to be exercised by the board of supervisors of such county, and by the governing authorities of the municipality in which the port of entry is located in such county, in order to carry out the provisions of this chapter, are hereby conferred.

HISTORY: Codes, 1942, § 7605-21; Laws, 1956, ch. 199, § 21.

§ 59-9-79. Validation of bonds.

Except as otherwise specifically provided in this chapter, the bonds issued under this chapter may, in the discretion of the board of supervisors, or the board of supervisors and the governing authorities of the municipality in which the port of entry is located in such county, be validated under Sections 31-13-1 through 31-13-11, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 7605-22; Laws, 1956, ch. 199, § 22.

§ 59-9-81. Applicability of debt limitation.

The bonds or other obligations issued by counties or municipalities pursuant to this chapter shall not constitute a debt within the meaning of any statutory limitation as to the amount of debt which may be incurred by any such county or by any such municipality.

HISTORY: Codes, 1942, § 7605-23; Laws, 1956, ch. 199, § 23; Laws, 1967, Ex. Sess. ch. 6, §§ 1-3, eff from and after passage (approved June 29, 1967).

Cross References — Limitation on county indebtedness, see § 19-9-5.
Limitation on municipal indebtedness, see § 21-33-303.

§ 59-9-83. Exemption from taxation of bonds; negotiability.

Except as otherwise specifically provided in this chapter, all bonds or other obligations issued pursuant to this chapter and any interest thereon or income therefrom shall be exempt from all taxation, except gift, transfer and inheritance taxes, insofar as may be within the power of the State of Mississippi to provide and shall be negotiable instruments within the meaning of the law of merchants and the Mississippi Uniform Commercial Code.

HISTORY: Codes, 1942, § 7605-24; Laws, 1956, ch. 199, § 24.

Cross References — Estate taxes generally, see §§ 27-9-1 et seq.

Tax on machinery, etc., used in operation of structures, facilities and land acquired and operated pursuant to any provision of this chapter, see § 27-65-20.

Uniform Commercial Code, see §§ 75-1-101 et seq.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Commercial Code §§ 68 et seq.

§ 59-9-85. Action to enforce contractual rights.

The State of Mississippi, any county acting through a county port authority or a county development commission, or any person, firm or corporation entering into any contract with any county, acting through a county port authority or a county development commission authorized by this chapter, shall be entitled to maintain any action in any court of competent jurisdiction against the State of Mississippi, the county and the county port authority and the county development commission to enforce any contractual right arising out of any such contract.

HISTORY: Codes, 1942, § 7605-06; Laws, 1956, ch. 199, § 6; Laws, 1958, ch. 226, § 6; Laws, 1960, ch. 345, § 1; Laws, 1961, 2nd Ex. Sess. ch. 3, § 1; Laws, 1967, Ex. Sess. ch. 5, § 1; Laws, 1968, ch. 433, § 1; Laws, 1971, ch. 462, § 1, eff from and after passage (approved March 30, 1971).

Editor's Notes — Laws of 1971, ch. 462, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, cause of action, suit, appeal, right or interest in and to lands or beach-front property on the Gulf of Mexico which existed prior to the effective date of this act, whether or not such claim, cause of action, suit, appeal, right or interest in and to such lands or interest therein shall have begun on the date on which this act becomes effective, or shall thereafter be begun. It is expressly provided that every right, title or interest in lands held by any person or groups of persons which front on the Gulf of Mexico in the State of Mississippi shall continue in full force and effect to the same extent as if this act had not become law."

CHAPTER 11.

COUNTY PORT AND HARBOR COMMISSION

Sec.
59-11-1. Creation of commission.
59-11-3. Appointment of members; terms of office; per diem.
59-11-5. Jurisdiction of commission; payments into county port fund; special tax levy.
59-11-7. Powers and duties of commission; right of county to receive state ad valorem tax for port improvement.

§ 59-11-1. Creation of commission.

Any county in the State of Mississippi bordering on the Mississippi Sound or the Gulf of Mexico, which has not heretofore created a county port authority or county development commission as authorized by Chapter 9 of this title is hereby authorized, in the discretion of the board of supervisors of such county, as evidenced by a resolution adopted by such board of supervisors, to create a county port and harbor commission.

HISTORY: Codes, 1942, § 7605-41; Laws, 1962, ch. 393, § 1, eff from and after passage (approved June 1, 1962).

Cross References — Development of harbor facilities by county bridge and park commission, see §§ 57-7-1 et seq.

County and municipal harbors, see §§ 59-7-1 et seq.

Harbor improvements by coast counties, see §§ 59-13-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

While Commission would be empowered under Chapters 9 and 11 of Title 59 of Mississippi Code to employ security service in connection with operation of Stennis International Airport, there is no statutory authority for Hancock County Port and Harbor Commission to establish independent police department for this or any other purpose. Genin Sept. 22, 1993, A.G. Op. #93-0655.

Where an airport is owned by a county port commission created pursuant to this section, § 61-5-11, applying to municipal airport authorities could not be used to exempt from taxes leased property at the airport. Genin, Jan. 9, 2004, A.G. Op. 03-0584.

Development authorities or commissions created under §§ 59-9-1 et seq. and §§ 59-11-1 et seq. do not have the powers or authorities granted by the Municipal Airport Law, §§ 61-5-1 et seq. Genin, Jan. 9, 2004, A.G. Op. 03-0494.

§ 59-11-3. Appointment of members; terms of office; per diem.

(1) Any county port and harbor commission created pursuant to Section 59-11-1 shall be appointed as follows: three (3) members shall be appointed by the Governor, one (1) from each of the three (3) municipalities of the county, which appointments shall be made from those persons recommended and nominated by the governing authorities of the municipalities, and shall be qualified electors of the county; and five (5) members shall be appointed by the

board of supervisors of such county, each supervisor to recommend the appointment of one (1) member thereof. The members of the county port and harbor commission shall serve for terms concurrent with that of the Governor and the board of supervisors making such appointment and hold that appointment until such time as their successor shall be appointed and installed as a commissioner upon taking his or her oath of office.

(2) Each member of the county port and harbor commission shall receive per diem compensation in an amount up to Eighty-four Dollars ($84.00) for each day engaged in attendance of meetings of the county port and harbor commission or when engaged in other duties of the county port and harbor commission, and shall be reimbursed for mileage and actual travel expenses at the rate authorized for county employees under Section 25-3-41.

HISTORY: Codes, 1942, § 7605-42; Laws, 1962, ch. 393, § 2; Laws, 2004, ch. 433, § 1; Laws, 2005, ch. 340, § 1; Laws, 2008, ch. 454, § 1; Laws, 2009, ch. 453, § 2; Laws, 2013, ch. 502, § 1, eff from and after July 1, 2013; Laws, 2021, ch. 394, § 1, eff from and after July 1, 2021.

Editor's Notes — Chapter 502 (HB 750), Laws of 2013, which amended this section, is known as the "Representative Jessica S. Upshaw Memorial Act."

Amendment Notes — The 2021 amendment, in (1), added "and hold that appointment...taking his or her oath of office" at the end.

OPINIONS OF THE ATTORNEY GENERAL

A county port and harbor commission may pay its commissioners the $ 55.00 per diem rate only at official meetings at which official action of the commission takes place, and not at committee meetings or while engaged in other duties. Genin, July 30, 2004, A.G. Op. 04-0335.

§ 59-11-5. Jurisdiction of commission; payments into county port fund; special tax levy.

The county port and harbor commission shall have jurisdiction over the ports, terminals, harbors, channels, and passes leading thereto, and all vessels, boats, and wharves, common carriers and public utilities therein, using the same within the county. The board of supervisors of each such county electing to exercise the provisions of this chapter shall pay or cause to be paid into the port fund of said county a sum equal to one fourth of the sum paid into said fund under this chapter from the state tax levy and such payments shall be continued as long as there remains unpaid and outstanding any bonded indebtedness created by such board of supervisors as hereinafter provided. Any such board of supervisors shall provide the sum herein required either by appropriation from any available funds of the county or by the levy, in addition to all other county taxes, of a tax of two mills on the dollar of the assessed valuation of taxable property within such county upon which taxes for the general county fund are levied and collected. In case of a special tax levy as herein authorized, the tax collector of each such county shall set aside the avails of such levy and shall pay the same directly into the port fund of such county. However, no part of such two mill levy shall be reimbursable under the homestead exemption laws of the State of Mississippi.

HISTORY: Codes, 1942, § 7605-43; Laws, 1962, ch. 393, § 3, eff from and after passage (approved June 1, 1962).

Cross References — Homestead exemptions, see §§ 27-33-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The Hancock County Port and Harbor Commission, should it find consistent with fact and encompass such findings in an order spread upon its minutes, that the dredging of Little Lake Pass in Louisiana is necessary to keep the passes open to the commission's industrial park, may advertise for bids and contract for the dredging of such pass; however, such contract might be subject to the jurisdiction of the appropriate federal and Louisiana authorities. Genin, April 2, 1999, A.G. Op. #99-0142.

§ 59-11-7. Powers and duties of commission; right of county to receive state ad valorem tax for port improvement.

The county port and harbor commission shall have the powers and duties vested in the county port authority or the county development commission by Chapter 9 of this Title. However, no county in which a county port and harbor commission has been created, as provided in this chapter, shall be entitled to receive any portion of the state ad valorem tax made available for port improvement purposes under the provisions of Section 59-7-103, unless and until such county has made application to the Mississippi Board of Economic Development, and such board shall first adjudicate and determine the feasibility of the project for which application for such funds is made, as provided in Section 59-7-103.

HISTORY: Codes, 1942, § 7605-44; Laws, 1962, ch. 393, § 4; Laws, 1984, ch. 488, § 255, eff from and after July 1, 1984.

Editor's Notes — Section 57-1-2 provides that the term "Board of Economic Development" shall mean the "Department of Economic and Community Development."

OPINIONS OF THE ATTORNEY GENERAL

While Commission would be empowered under Chapters 9 and 11 of Title 59 of Mississippi Code to employ security service in connection with operation of Stennis International Airport, there is no statutory authority for Hancock County Port and Harbor Commission to establish independent police department for this or any other purpose. Genin Sept. 22, 1993, A.G. Op. #93-0655.

The Hancock County Port and Harbor Commission, should it find consistent with fact and encompass such findings in an order spread upon its minutes, that the dredging of Little Lake Pass in Louisiana is necessary to keep the passes open to the commission's industrial park, may advertise for bids and contract for the dredging of such pass; however, such contract might be subject to the jurisdiction of the appropriate federal and Louisiana authorities. Genin, April 2, 1999, A.G. Op. #99-0142.

CHAPTER 13.

HARBOR IMPROVEMENTS BY COAST COUNTIES

Sec.

59-13-1. Harbor improvements by coast counties authorized.
59-13-3. Employment of engineers, architects, etc.; adoption of order giving notice of intent to issue bonds.
59-13-5. Publication of order giving notice of intent to issue bonds; election on bond issue.
59-13-7. Limitations on amount of bond issues; prerequisites for issuance of bonds.
59-13-9. Terms and conditions of bonds; tax levy for payment of bonds; execution of bonds.
59-13-11. Purchase of land and rights of way; eminent domain.
59-13-13. Operation of harbor facilities; collection of charges.
59-13-15. Levy of tax by certain coast counties for aiding in development and improvement of harbor or channel.

§ 59-13-1. Harbor improvements by coast counties authorized.

The board of supervisors of any county in the State of Mississippi, bordering on the Mississippi Sound or Gulf of Mexico, having an assessed valuation in excess of eight million dollars ($8,000,000.00) according to the last completed assessment; and any county in the state bordering on the Mississippi Sound or Gulf of Mexico having an assessed valuation of less than five million dollars ($5,000,000.00), according to the last completed assessment, be, and it is hereby authorized, in its discretion, and subject to complying with the provisions of this chapter, to use and expend for public harbor improvements, harbor development, breakwaters, wharves and docks, recreational centers and all buildings in connection therewith deemed necessary or appropriate by such board, and for the purchase of necessary lands and rights of way in the county or in any supervisor's district therein bordering on the Mississippi Sound or Gulf of Mexico, any funds received from the sale of bonds issued under the provisions of this chapter.

HISTORY: Codes, 1942, § 7606; Laws, 1938, Ex. Sess. ch. 59; Laws, 1940, ch. 269.

Cross References — Harbor improvements by bridge and park commissions, see §§ 55-7-1 et seq.

County and municipal harbors, see §§ 59-7-1 et seq.

§ 59-13-3. Employment of engineers, architects, etc.; adoption of order giving notice of intent to issue bonds.

The board of supervisors of any county described in Section 59-13-1 shall have authority to employ competent engineers or architects to make necessary plans and specifications for such harbor improvements and buildings which the board may deem necessary and proper to be constructed in connection therewith and said plans and specifications, after the same have been approved by said board, shall be filed with its clerk and the board shall adopt an order to be spread upon its minutes giving notice of its intention to issue bonds to provide funds for such improvements, or any of them, as shown by said plans and specifications.

HISTORY: Codes, 1942, § 7607; Laws, 1938, Ex. Sess. ch. 59; Laws, 1940, ch. 269.

Cross References — Architects generally, see §§ 73-1-1 et seq.
Engineers generally, see §§ 73-13-1 et seq.

§ 59-13-5. Publication of order giving notice of intent to issue bonds; election on bond issue.

Upon the adoption of such order by the board of supervisors, as provided for in Section 59-13-3, the clerk of such board shall publish in two weekly issues of some newspaper having a general circulation in the county, a notice of intention to issue bonds for said purposes; if, within fifteen days after the first publication of a copy of such notice twenty-five per cent of the qualified electors of the county if the bonds to be issued are to be county-wide bonds, or twenty-five per cent of the qualified electors of the supervisor's district if the bonds to be issued are to be district bonds, petition the board of supervisors for an election to determine whether or not such bonds shall be issued, such election shall be ordered by said board of supervisors in which the qualified electors of the county, if the bonds to be issued are county-wide bonds, or of the supervisor's district, if the bonds to be issued are district bonds, shall be eligible to participate, and if at such election a majority of those voting vote in favor of the issuance of such bonds the same shall be issued, but if a majority shall vote against the issuance of such bonds the same shall not be issued. Such election shall be held and conducted and the returns thereof made as provided by law for other county or district elections. If no such petition be presented within fifteen days after the first publication of such notice, the bonds shall be issued in the manner provided by law. However, in any case where an election has heretofore been held in any county or supervisors district, pursuant to the provisions of this chapter on the question of issuing bonds of such county or supervisors district for the purpose of providing and constructing public harbor improvements, harbor developments, breakwaters, wharves and docks, recreational centers and all buildings in connection therewith, and providing necessary rights of way, and a majority of those who participated in such election voted in favor of the issuance of such bonds, and such bonds have not for any reason been issued, the board of supervisors of such county in which such supervisors district is situated, as the case may be, may, by resolution of such board, adopted at any time within twelve months from and after the passage of this chapter, authorize and direct the issuance of bonds of such county or district under the provisions of this chapter, in an amount not exceeding the amount set forth in the proposition submitted at such election, and for the purposes authorized by this chapter, without the giving of any notice required in this section and without any further election on the issuance thereof.

HISTORY: Codes, 1942, § 7608; Laws, 1938, Ex. Sess. ch. 59; Laws, 1940, ch. 269.

Cross References — County bond issues generally, see §§ 19-9-1 et seq.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 7608] with regard to the issuance of bonds by certain counties for public harbor improvement, controls over a prior statute pertaining to harbor improvement and the issuance of bonds, insofar as it deals with the matter specifically. Tonsmeire v. Board of Supervisors, 1 So. 2d 511 (Miss. 1941).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 309 et seq.

§ 59-13-7. Limitations on amount of bond issues; prerequisites for issuance of bonds.

The board of supervisors of any county in Mississippi bordering on the Mississippi Sound or Gulf of Mexico, and having an assessed valuation in excess of eight million dollars ($8,000,000.00) may, in its discretion, issue and sell the bonds of any supervisor's district therein bordering on the Mississippi Sound or Gulf of Mexico, in an amount not exceeding two hundred thousand ($200,000) dollars, and the board of supervisors of any such county having an assessed valuation of less than five million dollars ($5,000,000.00) may, in its discretion, issue and sell the bonds of such county in an amount not exceeding two hundred thousand dollars ($200,000) and the proceeds of such bonds shall be used to construct the improvements as shown by the aforesaid approved plans and specifications, and to pay all costs and expenses necessarily incident thereto, except as provided in Section 59-13-5. Such bonds shall not be issued until notice of intention to issue and sell the same shall have been made in the manner provided for giving notice in said section, and all of the provisions of said section as to petition for election, time to file petitions for election, ordering and holding an election, shall apply to issuance of such bonds; if no petition for an election be filed in the time fixed, or if an election be called and a majority of those voting thereat vote in favor of the issuance of such bonds, the bonds shall be issued and sold at such time and in such manner as the board of supervisors shall determine.

HISTORY: Codes, 1942, § 7609; Laws, 1938, Ex. Sess. ch. 59; Laws, 1940, ch. 269.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 7609], regarding the issuance of bonds by certain counties for public harbor improvement, controls over a prior statute pertaining to harbor improvement and the issuance of bonds, insofar as it deals with the matter specifically. Tonsmeire v. Board of Supervisors, 1 So. 2d 511 (Miss. 1941).

§ 59-13-9. Terms and conditions of bonds; tax levy for payment of bonds; execution of bonds.

Bonds issued under the authority of this chapter shall be full faith and credit obligations of the county or supervisors district for which the same are issued and the board of supervisors shall annually levy upon all taxable property within such county or supervisors district, as the case may be, an ad valorem tax sufficient to pay said bonds at maturity and the interest thereon as it accrues. Said bonds shall bear interest at a rate to maturity not to exceed that allowed in Section 75-17-101, shall be payable semiannually, shall mature within twenty (20) years of the date of issuance in such annual maturities and denominations and shall be in such form as the board of supervisors may direct and such bonds shall not be subject to any limitation relative to amount of bonded debt. Said bonds shall be executed by the signature of the president of the board of supervisors, countersigned by the clerk thereof, under the seal of such board.

HISTORY: Codes, 1942, § 7610; Laws, 1938, Ex. Sess. ch. 59; Laws, 1940, ch. 269; Laws, 1986, ch. 384, § 1, eff from and after passage (approved March 24, 1986).

Cross References — Signatures on county bonds generally, see § 19-9-19.

Signatures on bonds issued for port or harbor improvements, see § 59-7-503.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

§ 59-13-11. Purchase of land and rights of way; eminent domain.

The board of supervisors of any county in which any harbor improvements may be constructed under the provisions of this chapter, may purchase lands and rights of way necessary therefor and pay for the same out of the proceeds of bonds herein provided; and for the purpose of carrying out the provision of this chapter said boards of supervisors are hereby clothed with the power and authority, and it is made their duty, to exercise the right of eminent domain, in their discretion, in the acquisition of such lands and rights of way.

HISTORY: Codes, 1942, § 7611; Laws, 1938, Ex. Sess. ch. 59; Laws, 1940, ch. 269.

Cross References — Taking private property for public use, see Miss. Const. Art. 3, § 17.

Eminent domain generally, see § 11-27-1 et seq.

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Eminent Domain § 45.

§ 59-13-13. Operation of harbor facilities; collection of charges.

The board of supervisors of any county after having constructed improvements under this chapter is hereby authorized and empowered to operate and maintain such harbor facilities and to make and enforce all rules and regulations necessary for such operation and maintenance, and such board may also fix and collect charges for the use of such facilities and may, in its resolution or order directing the issuance of bonds under this chapter, irrevocably pledge to the payment of the principal of and the interest on such bonds the net income and revenue resulting from the operation of such facilities.

HISTORY: Codes, 1942, § 7612; Laws, 1938, Ex. Sess. ch. 59; Laws, 1940, ch. 269.

§ 59-13-15. Levy of tax by certain coast counties for aiding in development and improvement of harbor or channel.

(1) The board of supervisors of any county in the State of Mississippi bordering on the Mississippi Sound or Gulf of Mexico having an assessed valuation at its last completed assessment in excess of $45,000,000.00 and having within its borders a city in which there is maintained a harbor or channel with a depth of not less than four and one-half feet, and in which city there is operated seasonally one or more canning plants for canning, processing or freezing shrimp, oysters or other seafoods, is hereby authorized, in its discretion, to annually levy a tax not to exceed one mill on each dollar of the assessed valuation of all of the taxable property within such county, for the purpose of aiding in the development and improvement of such harbor or channel of said city.

(2) The proceeds of said levy shall be paid to the governing authorities of the city wherein such channel or harbor is located and shall be deposited in the city depository in a special account to be designated as "port fund" of such city and the same shall be expended by the governing authorities of such city for the development and improvement of said channel or harbor, for the purposes and in the manner set out in the general laws of Mississippi, including Section 21-37-15, Mississippi Code of 1972.

(3) No reimbursement shall be made under the Homestead Exemption Law of 1946 Sections 27-33-1 through 27-33-65, Mississippi Code of 1972, for any tax levy made under the provisions of this chapter.

HISTORY: Codes, 1942, § 7612.5; Laws, 1956, ch. 200, §§ 1-3.

CHAPTER 15.

SMALL CRAFT HARBORS

Sec.

59-15-1.	Acquisition of land, harbor sites or water frontage by certain cities.
59-15-3.	Operation of improvements and facilities.
59-15-5.	General powers of municipality as to bonds.
59-15-7.	Authority to issue bonds; audit and inspection of accounts.
59-15-9.	Payment of principal and interest on bonds generally.
59-15-11.	Details of bonds; interim certificates.
59-15-13.	Disposition of proceeds of bonds; penalties for diversion; guarantee of payment of bonds.
59-15-15.	Mortgage or deed of trust.
59-15-17.	Exemption from taxation of bonds.
59-15-19.	Trustees.

§ 59-15-1. Acquisition of land, harbor sites or water frontage by certain cities.

The authorities of any city in this state which has a population of ten thousand or more, according to the last official government census, and the authorities of any municipality bordering on the Mississippi Sound or Gulf of Mexico are hereby given the authority to acquire by purchase, deed, donation, gift, grant, reclamation, lease, dedication, or otherwise, land, harbor sites or water frontage for the purpose of establishing, developing, promoting, maintaining, and operating harbors for small water crafts and recreational parks connected therewith within its territorial limits, or both, and shall have the power to acquire, purchase, install, rent, lease, mortgage, incumber, construct, own, hold, maintain, equip, use, control and operate recreational parks and harbors for small water craft.

HISTORY: Codes, 1942, § 7613; Laws, 1935, ch. 63; Laws, 1938, Ex. Sess. ch. 71.

Cross References — County and municipal harbors, see §§ 59-7-1 et seq.
Landings, see §§ 59-19-1 et seq.
Regulation of boats and other vessels generally, see §§ 59-21-1 et seq.

RESEARCH REFERENCES

Am. Jur.
70 Am. Jur. 2d, Shipping §§ 79-81.

§ 59-15-3. Operation of improvements and facilities.

All improvements and facilities constructed pursuant to this chapter shall be maintained and operated under the control of the city authorities. The city authorities of such city, or cities, shall, subject to and in accordance with any agreement, or agreements, as may be made by any such city with the purchaser, or purchasers, of bonds or other obligations issued pursuant to this chapter, prescribe, levy and collect all rent, fees, tolls, revenues, privileges, commissions, and other charges in connection with the operation, use and occupancy of the aforesaid improvements and facilities, and shall pay over all net revenues derived from the operation of said improvements and facilities to any trustee or successor thereto designated as hereinafter in this chapter provided. The net revenues shall be deemed to be such as may be defined in any agreement, or agreements, entered into between any such city, and the purchaser, or purchasers, of any bonds or other obligations issued pursuant to this chapter. The authorities of any such city, or cities, shall make a financial report to the said trustee annually of the operation of the aforesaid improvements and facilities.

HISTORY: Codes, 1942, § 7614; Laws, 1935, ch. 63.

Cross References — Municipal powers generally, see §§ 21-17-1 et seq.
Municipal bonds, see §§ 21-33-301 et seq.
Powers of municipality in which there is situated a port of entry, see §§ 59-3-1 et seq.

§ 59-15-5. General powers of municipality as to bonds.

In connection with the issuance of bonds or other obligations by any municipality pursuant to this chapter or in order to secure the payment of said bonds or other obligations, such municipality shall have power:

(a) To accept grants from the United States of America, the President of the United States, or such agencies, instrumentalities or corporations as may be designated or created to make grants or loans (hereinafter termed "federal agency") pursuant to any act of the Congress of the United States providing for the construction of useful public works for or in aid of work, development authorized by this chapter.

(b) To make such contracts and execute such instruments containing such provisions, covenants and conditions as in the discretion of the authorities of any such municipalities may be necessary, proper or advisable for the purpose of obtaining or securing grants, loans, or other financial assistance from any federal agency pursuant to any act of Congress of the United States, to make such further, different or additional contracts and execute all instruments necessary or convenient in or for the furtherance of any work, development or improvement, including but not limited to all property real and personal appurtenant thereto or connected therewith and the existing work, development or improvement, if any, to which the work, development or improvement authorized by this chapter is an extension, addition, betterment or embellishment (hereinafter termed "work, development or improvement"), to carry out and perform the terms and conditions of any such contract or instrument.

(c) To pledge all or any part of the fees, rents, tolls, revenues or other charges received or receivable by such municipality from any work, development or improvement to which its right then exists or the right to which may thereafter come into existence.

(d) To covenant against the pledging of all or any part of the fees, rents, tolls, revenues or other charges received or receivable by such municipality from any work, development or improvement to which its right then exists or the right to which may thereafter come into existence so long as any of the bonds or other obligations issued under the provisions of this chapter remain unpaid.

(e) To covenant against the incumbering of all or any part of any work, development or improvement or against permitting or suffering any lien thereon so long as any of the bonds or other obligations issued under the provisions of this chapter remain unpaid.

(f) To covenant as to what other or additional debt may be incurred by such municipality.

(g) To provide for the preparation, specifications, terms, form, registration, extension, execution and authentication of any bonds or other obligations issued pursuant to this chapter.

(h) To provide for the replacement of lost, destroyed or mutilated bonds or other obligations issued pursuant to this chapter.

(i) To covenant as to the fees, rents, revenues, concessions or tolls to be charged, the amount to be raised each year or other period of time and as to the use and disbursement to be made thereof.

(j) To covenant to set aside or to pay over reserves and sinking funds and as to the disposal thereof.

(k) To redeem prior to maturity, with or without premium, bonds or other obligations issued pursuant to this chapter and to covenant for their prior redemption and to provide the terms and conditions thereof.

(*l*) To covenant against extending the time for the payment of the interest on or principal of the bonds or other obligations issued pursuant to this chapter directly or indirectly by any means or in any manner.

(m) To covenant as to books of account of such municipality and as to the inspection and audit thereof and as to the accounting methods.

(n) To covenant as to the rights, liabilities, powers and duties arising upon the breach by such municipality of any covenant, condition or obligation assumed pursuant to this chapter.

(o) To make such covenants and do any and all such acts and things as may be necessary, convenient or desirable in order to secure any bonds or other obligations issued pursuant to this chapter or in the absolute discretion of the authorities of such municipality in order to make such bonds or other obligations more marketable, notwithstanding that such covenants, acts, or things may not be enumerated herein or expressly authorized herein; it being the intention hereby to give the authorities of any municipality issuing bonds or other obligations pursuant to this chapter the power to do all things in the issuance of said bonds or other obligations and for their execution that may not be inconsistent with the constitution of the State of Mississippi.

HISTORY: Codes, 1942, § 7617; Laws, 1935, ch. 63.

§ 59-15-7. Authority to issue bonds; audit and inspection of accounts.

Any city as is described in Section 59-15-1, is hereby given authority, upon the adoption of a resolution to such effect, to issue bonds or other obligations for any or all of the purposes as in this chapter herein provided; but such bonds or other obligations shall not be issued unless and until the governing authorities of the municipality are first authorized and requested so to do by a petition signed by not less than seventy-five per cent of the qualified electors of the municipality, or until authorized so to do by two-thirds of the qualified electors of the municipality who vote in an election called for that purpose. Said petition, or the ballot used in such election, as the case may be, shall disclose the purposes for which said funds are sought, and all funds derived thereunder shall be kept in a separate account by the municipality and shall be used solely for the purposes set forth in said petition, or upon the aforesaid ballot, as the case may be. The books of accounts and other sources of information pertaining to duties under the provisions of this chapter of any such city shall be and remain at all times open to inspection and subject to audit by the holder or holders of any bonds or other obligations issued pursuant to this chapter.

HISTORY: Codes, 1942, § 7616; Laws, 1935, ch. 63; Laws, 1936, ch. 312.

§ 59-15-9. Payment of principal and interest on bonds generally.

The bonds or other obligations issued by any municipality of the State of Mississippi pursuant to the provisions of this chapter shall be secured as to payment as hereinafter in this chapter provided, and in addition thereto shall be secured as to payment by the full faith and credit of the municipality issuing the same, and the governing authorities of such municipality shall annually levy a tax on all the taxable property of such municipality sufficient to produce an amount, which, when added to the net revenues hereinafter in this chapter authorized to be pledged for the payment thereof, will be sufficient to pay all interest and principal of such bonds which may mature during such annual period. Such bonds or other obligations so issued, being additionally secured as to payment as hereinafter in this chapter provided, shall not be construed as a debt within the meaning of any statutory limitation as to the amount of which may be incurred by any such municipality.

HISTORY: Codes, 1942, § 7615; Laws, 1935, ch. 63; Laws, 1936, ch. 312.

Cross References — Applicability of debt limitations to municipal port and harbor bonds, see §§ 59-7-317, 59-7-423.

§ 59-15-11. Details of bonds; interim certificates.

The power to issue bonds or other obligations authorized by Sections 59-15-1 through 59-15-9, shall be vested in, and may be exercised from time to time by, the governing body of any municipality described in said sections. Such bonds or other obligations shall be authorized by resolution of the governing body of any such municipality and shall bear such date or dates, mature at such time or times, not exceeding twenty-five years from their respective dates, bear interest at such rate or rates, not exceeding four per centum per annum, be in such denomination, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of prior redemption, with or without premium as such resolution or resolutions may provide. Such bonds or other obligations may be sold at public or private sale for such price or prices as the governing body of such municipality shall determine, provided that the interest cost to maturity of the money received from any issue of said bonds or other obligations shall not exceed four per centum per annum. Such bonds or other obligations may be issued by any municipality described in Sections 59-15-1 through 59-15-9 in a principal amount not exceeding in the aggregate one hundred thousand dollars ($100,000.00), for any purpose or purposes authorized by said sections. Such municipality shall have power out of any funds available to purchase any bonds or other obligations issued by it pursuant to this chapter, and all bonds or other obligations so purchased shall be canceled and no bonds or other obligations shall be issued in lieu thereof. In anticipation of the issuance of the definitive bonds authorized by this chapter, any such municipality may issue interim certificates. Such interim certificates shall be in such form, contain such terms, conditions or provisions, bear such date or dates, and evidence such agreement or agreements relating to their discharge by payment or by the delivery of the definitive bonds, as such municipality by resolution of its governing body may determine. Any bonds, interim certificates or other obligations issued pursuant to this chapter shall be fully negotiable within the meaning and for all the purposes of the Mississippi Uniform Commercial Code.

HISTORY: Codes, 1942, § 7620; Laws, 1935, ch. 63.

§ 59-15-13. Disposition of proceeds of bonds; penalties for diversion; guarantee of payment of bonds.

The proceeds from the sale of any bonds or other obligations issued pursuant to this chapter shall be placed to the credit of the municipality issuing such bonds in a bank or banks which are members of the Federal Reserve System and may be withdrawn therefrom in accordance with any agreement or agreements entered into between such municipality and the purchaser or purchasers of such bonds or other obligations and shall be used for no other purpose than the purpose or purposes set forth in the original resolution of the governing body of such municipality. Any officer or other person diverting or assisting to divert any such funds to any other purpose or purposes than the purpose or purposes originally set forth in said resolution of the governing body of such municipality shall be guilty of a felony and punishable accordingly, and shall be liable both personally and on official bond for such diversion. Nothing in this chapter shall be construed as a guarantee on the part of such city to pay the principal of or interest on any bonds or other obligations issued pursuant to this chapter.

HISTORY: Codes, 1942, § 7621; Laws, 1935, ch. 63.

§ 59-15-15. Mortgage or deed of trust.

Any municipality issuing bonds or other obligations pursuant to this chapter by resolution or resolutions duly adopted, is hereby given authority to execute and deliver a mortgage or deed of trust on any or all lands, properties, improvements and facilities, the acquisition, construction, maintenance or operation of which are provided for by this chapter. Such resolution or resolutions of such municipality shall prescribe the provisions, covenants and conditions of any such mortgage or deed of trust. Such provisions, covenants and conditions, if not self-executing, may be enforced by appropriate proceedings, either in law or in equity.

HISTORY: Codes, 1942, § 7622; Laws, 1935, ch. 63.

§ 59-15-17. Exemption from taxation of bonds.

Bonds or other obligations issued pursuant to this chapter and any interest thereon or income therefrom shall be exempt from all taxation, except gift, transfer or inheritance taxes, in so far as may be within the power of the State of Mississippi so to provide.

HISTORY: Codes, 1942, § 7619; Laws, 1935, ch. 63.

§ 59-15-19. Trustees.

Any municipality issuing bonds or other obligations pursuant to this chapter shall, so long as any such bonds or other obligations remain outstanding and unpaid, by resolution or resolutions duly adopted, authorize and appoint a trustee, satisfactory to the purchaser or purchasers of any bonds or other obligations issued pursuant to this chapter, or any successor thereto, with the following powers and duties:

(a) Such trustee so appointed, or any successor thereto, shall receive and receipt for all money paid or to be paid to it in accordance with Section 59-15-3, constituting the net revenues derived from the operation of the improvements and facilities authorized by this chapter;

(b) Such trustee so appointed, or any successor thereto, shall deposit all money received or to be received, in a special account or accounts in a bank or banks which are members of the Federal Reserve System, with such provisions for security therefor as may be incorporated in any agreement or agreements entered into between any such municipality and the purchaser or purchasers of any such bonds or other obligations;

(c) Such trustee so appointed, or any successor thereto, shall use and apply all such money so received to the payment of principal of and interest on any bonds or other obligations issued by any municipality pursuant to this chapter, as the same become due, and shall use and apply any surplus remaining after such payment or payments for the prior redemption, with or without premium, of bonds or other obligations issued by any municipality pursuant to this chapter, or in accordance with the provisions of any agreement or agreements as may be made between any municipality issuing bonds or other obligations pursuant to this chapter and the purchaser or purchasers of such bonds or other obligations;

(d) Such trustee so appointed, or any successor thereto, shall have and be vested with all rights, powers and duties, in addition to the foregoing, as may be provided for in any agreement or agreements between any municipality issuing bonds or other obligations pursuant to this chapter and the purchaser or purchasers of such bonds or other obligations;

(e) Such trustee so appointed, or any successor thereto, shall by an instrument in writing, accept such trust and shall file such written acceptance of such trust with the clerk of the municipality so appointing such trustee;

(f) If such trustee so appointed, or any successor thereto, shall die, fail, neglect or refuse to perform any of the duties herein imposed or that may be imposed by reason of any of the provisions of any agreement or agreements as aforesaid, such trustee, or any successor thereto, shall, on the written request of the holder or holders of twenty per centum or more in aggregate principal amount of bonds or other obligations issued pursuant to this chapter then outstanding and unpaid, be removed, by resolution duly adopted by the municipality by which such trustee, or any successor thereto, was appointed; and in such event, it shall be the duty of any such trustee so removed to effectuate a valid transfer of all money then in the possession or under the control of such trustee so removed to a duly appointed successor, and a failure on the part of such trustee so removed to do so shall constitute an embezzlement of such money and shall be punishable accordingly;

(g) In the event any such trustee so appointed, or any successor thereto, shall die or be removed as hereinabove provided, it shall be the duty of any such municipality immediately by resolution duly adopted to appoint a trustee, as successor thereto, who is satisfactory to said holder or holders of twenty per centum or more in aggregate principal amount of bonds or other obligations issued pursuant to this chapter then outstanding and unpaid.

HISTORY: Codes, 1942, § 7618; Laws, 1935, ch. 63.

CHAPTER 17.

STATE INLAND PORTS

Sec.
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§ 59-17-1. Short title; "board" defined.

This chapter may be cited as the "State Inland Ports Law."

As used in this chapter, the word "board" shall mean the Mississippi Development Authority.

HISTORY: Codes, 1942, § 7623-01; Laws, 1968, ch. 430, § 1, eff from and after

passage (approved August 8, 1968); Laws, 2018, ch. 351, § 1, eff from and after passage (approved March 15, 2018).

Editor's Notes — Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Mississippi Development Authority".

§ 59-17-3. Declaration of public policy.

It is hereby declared to be the public policy of the state to aid the industrial development and economy of the state through the acquisition, promotion, development, improvement and expansion of inland ports and attendant industrial sites.

HISTORY: Codes, 1942, § 7623-02; Laws, 1968, ch. 430, § 2, eff from and after passage (approved August 8, 1968).

§ 59-17-5. Construction of chapter.

(1) This chapter shall be construed liberally and broadly to effectuate the policy and purposes set out herein.

(2) This chapter shall be deemed to be full and complete authority for the exercise of the powers herein granted, but this chapter shall not be deemed to repeal or to be in derogation of any existing law of this state.

(3) The provisions of this chapter shall not be construed to repeal, amend, limit, or restrict statutes heretofore or hereinafter enacted, providing for the establishment, support, financing, and maintenance of port commissions, authorities, or other local agencies having jurisdiction over harbors, ports, rivers, channels, and waterways, nor to be applicable to any bond issue, heretofore or hereafter issued for port or harbor purposes by any county or municipality in which said port is located, and the provisions hereof shall be supplemental and cumulative and shall not repeal, limit, or restrict the authority granted any public body or agency under any existing statute, except as herein otherwise expressly provided.

HISTORY: Codes, 1942, §§ 7623-03, 7623-26, 7623-29; Laws, 1968, ch. 430, §§ 3, 26, 29, eff from and after passage (approved August 8, 1968).

§ 59-17-7. Functions of board and inland port as essential governmental functions.

The carrying out of the corporate purposes of the board and the state inland port authority is, in all respects, for the benefit of the people of the State of Mississippi and is a public purpose, and the board and such state inland port authority will be performing an essential governmental function in the exercise of the powers conferred upon them by this chapter.

HISTORY: Codes, 1942, § 7623-24; Laws, 1968, ch. 430, § 24, eff from and after passage (approved August 8, 1968).

§ 59-17-9. Duty of board to implement public policy; construction of rights, powers and duties of board.

There is hereby vested in the board the duty to implement such declared public policy as herein provided. Wide latitude and discretion shall be vested in the board in the exercise of its powers and duties, and the enumeration of specific rights, powers, and duties of said board, when followed by general powers, shall not be construed in the restrictive sense.

HISTORY: Codes, 1942, § 7623-03; Laws, 1968, ch. 430, § 3, eff from and after passage (approved August 8, 1968).

§ 59-17-11. Condition precedent to board action.

The board shall take no action in building, constructing, acquiring, or developing any state-owned inland port unless the Tennessee Valley Authority or other governmental agency agrees to furnish at least seventy-five percent (75%) of the cost of building, acquiring, constructing, or developing said port.

HISTORY: Codes, 1942, § 7623-04; Laws, 1968, ch. 430, § 4, eff from and after passage (approved August 8, 1968).

Cross References — Payments by Tennessee Valley Authority in lieu of taxes, see §§ 27-37-301 et seq.

§ 59-17-13. General powers of board; State Inland Port Authority authorized to borrow money and to enter into a joint agreement with a county or municipality to issue revenue bonds; leases executed by State Inland Port Authority exempt from ad valorem taxes if so stipulated in lease.

(1) The board shall have power to acquire, purchase, install, lease, construct, own, hold, maintain, equip, use, control, and operate ports, harbors, waterways, channels, wharves, piers, docks, quays, elevators, tipples, compresses, bulk loading and unloading facilities, warehouses, floating dry docks, graving docks, marine railways, tugboats, machinery and equipment, and water, air and rail terminals, and roadways and approaches thereto, and other structures and facilities needful for the convenient use of the same in the aid of commerce, including the dredging, deepening, extending, widening, or enlarging of any ports, harbors, rivers, channels, and waterways, the damming of inland waterways, the establishment of water basins, the acquisition and development of industrial sites and the reclaiming of submerged lands.

(2) The State Inland Port Authority, subject to the approval of the board, shall have the power to borrow money from any source, public or private, for any of its corporate purposes and to give such security as may be required in connection therewith and to enter into a joint agreement with the boards of supervisors of any county, or the governing authority of any municipality, or

both acting jointly, to issue revenue bonds of such county or municipality, or both, acting jointly, as provided by Section 59-7-311 which bonds may be payable out of any revenues of the authority, including grants or contributions from the federal government or other sources. Such revenue bonds may be issued without an election on resolution of the board of supervisors, governing body of the municipality, or both acting jointly, and shall not be subject to any limitation as to amount, and shall not be included or computed in the statutory limitation of indebtedness of any such county or municipality.

(3) All leases which are now in effect or which may hereafter be executed by the State Inland Port Authority for port, harbor, commercial or industrial improvements, and all structures and all improvements and other permanent facilities erected, installed or located by such lessees, or their successors or assignees within the limits of any port, harbor or part thereof, may be free and exempt from all state, county and municipal ad valorem taxes if so stipulated in such lease, and for such period as may be fixed in such lease, not to exceed such periods of time as are now authorized or may be hereafter authorized by law.

HISTORY: Codes, 1942, § 7623-05; Laws, 1968, ch. 430, § 5, eff from and after passage (approved August 8, 1968); Laws, 2018, ch. 351, § 2, eff from and after passage (approved March 15, 2018).

Cross References — Contracts with lessees for the construction of facilities such as those referred to in this section, and acquisition thereof by the board, see § 59-17-31.

§ 59-17-15. Acceptance of grants and contributions by board.

The board, in addition to the monies which may be received by it from the sale of bonds, the proceeds of a loan, and from the collection of revenues, rents and earnings derived under the provisions of this chapter, shall have the authority to accept from any public or private agency, or from any individual grants or loans for or in aid of the construction of any planned development, or for the payment of bonds, and to receive and accept contributions from any source, of money or property or other things of value to be held, used and applied only for the purposes for which such grants, loans or contributions may be made.

HISTORY: Codes, 1942, § 7623-25; Laws, 1968, ch. 430, § 25, eff from and after passage (approved August 8, 1968); Laws, 2018, ch. 351, § 3, eff from and after passage (approved March 15, 2018).

§ 59-17-17. Appraisal of plan for project; agreement between board and county or agency proposing project.

On the receipt of an application from any county or agency authorized under the laws of the State of Mississippi to operate or support a port or harbor project, or any part thereof, the board shall cause an independent determination and appraisal to be made of such analysis and survey, and the plan for the improvement, operation, development and expansion of such port or harbor, or any part thereof, and if the board shall find and determine that the plan for the improvement, operation, development or expansion of such port or harbor, or any part thereof, is practical and feasible and is in the public interest, and that such port or harbor, or any part thereof, can be operated economically under state ownership, and that the revenues therefrom would be sufficient, over a period of time, to make such ownership and/or operation by the state self-liquidating, then the board, in its discretion, may negotiate with such participating counties as required by this chapter or other authorized agency on the terms of an agreement for the acquisition by the state of such port or harbor, or any part thereof. The board may modify the proposed plan for the improvement, operation, development or expansion of such port or harbor, or any part thereof, and may impose such terms and conditions as, in its discretion, it may require to protect the interest of the state. Any agreement reached between the board and the participating counties, or other authorized agency, shall be reduced to writing.

HISTORY: Codes, 1942, § 7623-07; Laws, 1968, ch. 430, § 7; Laws, 1984, ch. 488, § 256, eff from and after July 1, 1984.

§ 59-17-19. Tax levy by counties for payment of bonds.

Before any additional bonds may be issued for equipment as authorized by Section 59-17-41, at least one (1) county shall have levied a tax upon all the taxable property, both real and personal, within its boundaries for the purpose of paying the principal and interest on such bonds and the aggregate amount of the additional issue shall have been approved by the board of economic development. Such tax shall be in an amount sufficient to pay the principal of and interest on the additional bonds issued for equipment as authorized by Section 59-17-41, and such tax levy shall not be reimbursable under the homestead exemption laws of this state.

The ad valorem tax levied by any county or counties under this section shall be reduced in whole or in part when the board and the state inland port authority find and determine that there has been or will be received in the state inland port authority fund a sufficient sum of money from other net revenues, thereby eliminating the need for this county tax levy.

HISTORY: Codes, 1942, § 7623-06; Laws, 1968, ch. 430, § 6; Laws, 1980, ch. 530, § 2; Laws, 1981, ch. 509, § 1; Laws, 1984, ch. 488, § 257, eff from and after July 1, 1984.

Editor's Notes — Section 57-1-2 provides that the term "Board of Economic Development" shall mean the "Department of Economic and Community Development".

Cross References — Bonds to be issued for inland port facilities and equipment contingent upon the tax levy authorized under this section, see § 59-17-41.

§ 59-17-21. Contract with master water management district to underwrite financial obligations for project.

In the event no three (3) counties shall contract on the basis provided for in Section 59-17-19, then any master water management district may be considered an authorized agency and may enter into a contract with the board whereby they must agree to underwrite any deficits incurred from the operation of the port and/or obligations incurred by the board for the port authority. The board will contract with a master water management district only after they have been convinced that adequate security has been furnished the board to protect the state's investment.

HISTORY: Codes, 1942, § 7623-06; Laws, 1968, ch. 430, § 6; Laws, 1984, ch. 488, § 258, eff from and after July 1, 1984.

Cross References — Water management districts, see §§ 51-7-1 et seq.

§ 59-17-23. Operation of port or harbor by state inland port authority; composition of authority; appointment and terms of office of members.

Any port or harbor, or any part thereof, and all facilities, structures, lands or other improvements, leased by, acquired by or conveyed to the state shall be operated by the board acting through a state inland port authority for such port or harbor, except as may be otherwise provided in this chapter. Such port authority shall be vested, in addition to the rights, powers and duties conferred hereunder, with the same jurisdiction, and the same rights, powers, and duties vested by law, in other port authorities within the state. Any conflict with other laws shall be governed by this chapter.

The state inland port authority shall consist of one member from the county in which the port is located and one member from each county that is contiguous to the county in which the port is located to be appointed for a period of four years by the respective board of supervisors of each of those counties, provided each county has levied the two mills required in Sections 59-17-19 and 59-17-21 and the governor shall appoint one member from each participating county outlined above of which two mills has been levied, plus one additional member from any one of the participating counties outlined above of which two mills has been levied. The initial terms by the governor's appointees shall be staggered, one member appointed for two years and others by adding one additional year; no term shall exceed five years. The number of years to be served on regular terms shall be the same number as the number of governor's appointees.

In the event the contracting agency is any master water management district, the board shall consist of the following: one member from the county in which the port is located and one member from each county that is contiguous to the county in which the port is located to be appointed by the respective boards of supervisors for a period of four years, and the governor shall appoint one member from each of the counties outlined above, plus one additional member from any one of the counties outlined above. The governor's five appointees' initial terms shall be for one, two, three, four and five years respectively, but all succeeding appointments shall be for terms of five years.

HISTORY: Codes, 1942, § 7623-08; Laws, 1968, ch. 430, § 8, eff from and after passage (approved August 8, 1968).

Cross References — Water management districts, see §§ 51-7-1 et seq.

§ 59-17-25. Organization of state inland port authority; oath and bond of members.

The members of the state inland port authority shall organize under the direction of the board in the same manner that state port authorities are organized and shall be entitled to compensation not exceeding that authorized by law for a state port authority. In its operation of such port or harbor, or any part thereof, such state inland port authority shall not be responsible to the counties participating, in which such port or harbor, or any part thereof, may be located, or other authorized port or harbor agency, but shall be responsible solely to the board. Before entering upon the duties of the office, each of said members shall take and subscribe to the oath of office required by Section 268 of the Mississippi Constitution of 1890, and shall file same with the secretary of state, and shall give bond in the sum of ten thousand dollars ($10,000.00), with a surety company or companies, authorized to do business in this state, conditioned according to law, and to be delivered to and approved by the treasurer of the State of Mississippi; the premiums on said bonds shall be paid from port funds.

HISTORY: Codes, 1942, § 7623-09; Laws, 1968, ch. 430, § 9, eff from and after passage (approved August 8, 1968).

Cross References — Who may administer oaths, see §§ 11-1-1, 25-1-9.
Compensation of port commissioners, see § 59-1-5.

§ 59-17-27. State inland port fund; board may contract for joint activities or employment of personnel.

The agreement between the board and the participating counties or other authorized agency shall provide that a fair and proportionate part of the expense of the board administering this chapter shall be considered a part of the cost of the development or operation of the planned development, and such costs shall be paid into a separate state fund in the state treasury, to be known as the "state inland ports fund." Such fund shall be used by the board for the promotion, development, construction, improvement, expansion, maintenance, advertising, and general advancement of the state harbors, ports, rivers, channels, and waterways and may be expended on requisition of the board for such purposes and such other purposes as in the opinion of the board is to the best interest of the ports, harbors, and waterways of this state. The salaries of all officers, employees, or agents of the board, performing duties required by this chapter, and all other expenses incidental to the port, harbor, or waterway operation of the board shall be fixed by the board and payable out of said fund. The board may contract with one or more state inland port authorities, or any city, county or other authorized port or harbor agency for any joint activity or for the joint employment of personnel with the expense of the activity or salary of such personnel to be paid by the board from operational funds provided by the contracting parties.

HISTORY: Codes, 1942, § 7623-11; Laws, 1968, ch. 430, § 11, eff from and after passage (approved August 8, 1968).

§ 59-17-29. Setting aside or leasing of lands and facilities by board.

The board, acting jointly with the State Inland Port Authority, is authorized to set aside, or lease all or portions of any lands, roads, docks, sheds, warehouses, elevators, compresses, floating dry docks, graving docks, marine railways, tugboats, or any other necessary or useful improvements constructed or acquired by it to individuals, firms, or corporations, public or private, for port, harbor, commercial or industrial purposes for a period not to exceed ninety-nine (99) years, or to execute a conveyance of sale on such terms and conditions and with such safeguards as would best promote and protect the public interest. Any industrial lease of lands or conveyance of sale may be executed upon such terms and conditions and for such monetary rental or other consideration as may be found adequate and approved by the board in orders or resolutions authorizing the same. Any covenants and agreements of the lessee or purchaser to make expenditures in determined amounts, and within such time or times, for improvements to be erected upon the land by such lessee or purchaser and to conduct thereon industrial and/or other operations in such aggregate payroll amounts and for such period of time as may be determined and defined in such lease or conveyance, and to give preference in employment where practical to residents of the State of Mississippi and to qualified residents of the city and the county in which such port or harbor is located, shall, if included in such lease or conveyance, constitute and be deemed sufficient consideration for the execution of any such lease or conveyance in the absence of monetary rental or other considerations; any such instrument may contain reasonable provisions giving the lessee the right to remove its or his improvements upon the termination of the lease.

HISTORY: Codes, 1942, § 7623-12; Laws, 1968, ch. 430, § 12, eff from and after passage (approved August 8, 1968); Laws, 2018, ch. 351, § 4, eff from and after passage (approved March 15, 2018).

OPINIONS OF THE ATTORNEY GENERAL

An inland port authority, acting jointly with the Department of Economic and Community Development, may sell or transfer property pursuant to the statute for less than fair market value or may lease the property for less than fair market rental upon a finding, consistent with fact, and spread upon its minutes, that the terms and conditions of such sale or lease will best promote and protect the public interest. Michael, April 24, 1998, A.G. Op. #98-0220.

§ 59-17-31. Authority of board or inland port authority to employ personnel, make contracts and purchases, and sue and be sued.

The board or the State Inland Port Authority, in the performance of its duties, may employ such personnel and make all contracts and purchases incidental to or necessary for the advancement, promotion, development, establishment, insurance, maintenance, repair, improvement and operation of any ports, harbors, rivers, channels and waterways, including, if required for its protection, retirement benefits, workers' compensation insurance and other employee benefits for the benefit of any employees of the board or State Inland Port Authority. The board or State Inland Port Authority shall make such contracts or purchases in accordance with state purchasing laws. Contracts let for any port, harbor, river, channel or waterway improvements shall be advertised as required by law for the letting of public contracts, and such contracts shall be awarded to the lowest and best bidder, who shall make such bond as shall be required by the board or State Inland Port Authority, conditioned for the faithful prosecution and completion of the work according to such contract, such bond to be furnished by a corporate surety company qualified to do business in this state. However, the board may negotiate and enter into contracts with responsible lessees for the construction of facilities by lessees, such as those referred to in Section 59-17-13, Mississippi Code of 1972, and the acquisition thereof by the board upon such terms and conditions and for such amounts as may be approved by the board. Where the rentals provided in the lease will be sufficient to fully repay the cost of the particular facility or where the monetary consideration for a deed is sufficient to fully repay the cost of land acquired for industrial operations described in the deed, contracts for construction, repairs, maintenance and operation of the facility or for the sale of the land may be negotiated and consummated without the necessity of advertising and obtaining competitive bids therefor.

The authority is granted the power to sue and be sued in its own name.

HISTORY: Codes, 1942, § 7623-13; Laws, 1968, ch. 430, § 13; Laws, 1976, ch. 400, § 1; Laws, 1984, ch. 495, § 27; reenacted and amended, Laws, 1985, ch. 474, § 18; Laws, 1986, ch. 438, § 40; Laws, 1987, ch. 483, § 41; Laws, 1988, ch. 442, § 38; Laws, 1989, ch. 537, § 36; Laws, 1990, ch. 518, § 37; Laws, 1991, ch. 618, § 37; Laws, 1992, ch. 491, § 39, eff from and after passage (approved May 12, 1992); Laws, 2018, ch. 351, § 5, eff from and after passage (approved March 15, 2018).

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Public contracts generally, see §§ 31-1-1 et seq.

Workers' compensation, see §§ 71-3-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The powers granted to state inland port authorities are set forth in this section and include the powers to employ personnel, make contracts and purchases, purchase insurance, and sue and be sued, but may not establish a revolving loan program. Michael, August 22, 1995, A.G. Op. #95-0429.

The statute does not allow a port authority to enter into a commercial venture to build, manage, develop, and operate a hotel and marina. Michael, Sept. 28, 2001, A.G. Op. #01-0611.

§ 59-17-33. Acquisition of rights of way, land and property by board generally; restriction on power of eminent domain.

For the acquiring of rights-of-way, land and property, including existing easements, restrictive covenants and reversionary estates necessary for the purpose herein authorized, the board shall have the right and power to acquire the same by purchase, negotiation or condemnation, and, should it elect to exercise the right of eminent domain, it may proceed in the manner provided by the general laws of the State of Mississippi for procedure by any county, municipality or corporation organized under the laws of this state, or in any other manner provided by law. The power of eminent domain shall apply not only as to all property of private persons or corporations, but also as to property already devoted to public use, including leaseholds, excepting interests in property owned by levee boards, drainage districts, or other flood control agencies. However, the board shall have no authority to acquire without the consent of the owner thereof any property operated and used for port, harbor or industrial purposes or such purposes as the board is authorized to acquire and use property for, unless an actual necessity therefor be alleged and proven. The board is authorized to accept donations of lands, rights therein, moneys and materials required for the maintenance or development of any port or harbor. The board may exchange any property or properties acquired under the authority of this chapter for other property or properties usable in carrying out the powers hereby conferred, and also remove from lands needed for its purposes and reconstruct on other locations, buildings, utilities, terminals, railroads or other structures upon the payment of just compensation, if it is necessary so to do, in order to carry out any of its plans for port development. The title to all land or property acquired under the authority of this chapter shall vest in the State of Mississippi. Nothing contained in this section shall be construed to authorize the taking by eminent domain of any private property except for necessary public use, said right of eminent domain to be limited to the acquisition of railroad rights-of-way, road rights-of-way and land for industrial use only.

HISTORY: Codes, 1942, § 7623-14; Laws, 1968, ch. 430, § 14; Laws, 1984, ch. 488, § 259, eff from and after July 1, 1984.

Cross References — Taking private property for public use, see Miss. Const. Art. 3,

§ 17.
Eminent domain, see §§ 11-27-1 et seq.

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Eminent Domain § 45.

§ 59-17-35. State bonds; issuance, terms, and conditions generally.

The board shall have power and is hereby authorized, at one (1) time, or from time to time, to provide by resolution for the issuance of negotiable bonds of the State of Mississippi by the state bond commission to provide funds for the purpose of paying all or any part of the cost of the acquisition of any state port, harbor, waterway or part thereof, and the planned development of any port, harbor, waterway or part thereof, but in no event shall the amount of such bonds issued exceed the actual cost of an approved plan for the development of any port, harbor, waterway or part thereof. The principal of and the interest on such bonds shall be payable from a special fund to be provided for that purpose in the manner hereinafter set forth. Such bonds shall bear the date or dates, be in such denomination or denominations, bear interest at such rate or rates, be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times, be redeemable prior to maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the board. Such bonds shall mature in annual installments beginning not more than four (4) years from date thereof and extending not more than thirty (30) years from date thereof. In no event shall any bonds be issued for a period of time which shall be longer than ninety percent (90%) of the expected useful life of the project or projects to be financed by the proceeds of said bonds. Such bonds shall be signed by the governor or by his facsimile signature, and the official seal of the state shall be affixed thereto, attested by the secretary of state. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

HISTORY: Codes, 1942, § 7623-15; Laws, 1968, ch. 430, § 15; Laws, 1984, ch. 488, § 260, eff from and after July 1, 1984.

Cross References — State bond commission, see §§ 31-17-1 et seq.

§ 59-17-37. State bonds; negotiability; exemption from taxation.

All bonds and interest coupons issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of Mississippi. Such bonds and income therefrom shall be exempt from all taxation within the State of Mississippi.

HISTORY: Codes, 1942, § 7623-16; Laws, 1968, ch. 430, § 16, eff from and after passage (approved August 8, 1968).

Cross References — Uniform Commercial Code, see §§ 75-1-101 et seq.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Commercial Code §§ 68 et seq.

§ 59-17-39. State bonds; proceedings for issuance; validation.

Such bonds as are issued under this chapter may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this chapter. The bonds authorized under the authority of this chapter may, in the discretion of the state bond commission, be validated in the Chancery Court of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by Sections 31-13-1 through 31-13-11, Mississippi Code of 1971, for the validation of county, municipal, school district, and other bonds. The necessary papers for such validation proceedings shall be transmitted to the state bond attorney by the attorney general, and the required notice shall be published in a newspaper published in the City of Jackson, Mississippi, and in a newspaper of general circulation published in the city or county where the planned development is located.

HISTORY: Codes, 1942, § 7623-17; Laws, 1968, ch. 430, § 17, eff from and after passage (approved August 8, 1968).

Cross References — State bond attorney, see § 31-13-1.
State bond commission, see §§ 31-17-1 et seq.

§ 59-17-41. State bonds; payment of principal and interest; limitation on amount issued.

The bonds issued under the provisions of this chapter shall be payable from the special fund provided therefor as hereinafter set out and shall be the general obligations of the State of Mississippi and backed by the full faith and credit of the state, and, if the funds supplied by the board to the State Treasurer from the sources prescribed by this chapter be insufficient to fully pay at maturity any installment of interest on said bonds or to pay at maturity the principal of said bonds, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated, and all such bonds shall contain recitals on their face substantially covering the foregoing provisions of this section. The amount of bonds issued for the acquisition and planned development of any state inland ports, harbors or waterways shall not exceed the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00). The purpose of this One Million Five Hundred Thousand Dollar ($1,500,000.00) bond issue is to purchase industrial sites and railroad right-of-way nearby the inland port.

From and after July 1, 1980, and contingent upon the tax levy authorized in Section 59-17-19, an additional amount of bonds not to exceed Two Million Dollars ($2,000,000.00) may be issued pursuant to the provisions of this chapter. The proceeds of such bonds may be used for any activities associated with carrying out the powers described in Section 59-17-13.

HISTORY: Codes, 1942, § 7623-18; Laws, 1968, ch. 430, § 18; Laws, 1980, ch. 530, § 3; Laws, 1981, ch. 356, § 1, eff from and after passage (approved March 18, 1981); Laws, 2018, ch. 351, § 6, eff from and after passage (approved March 15, 2018).

Cross References — County property tax levy sufficient to fund bonds as prerequisite to issuance of additional equipment bonds authorized by this section, see § 59-17-19.

§ 59-17-43. State bonds; manner and price of sale.

The state bond commission shall sell such state bonds in such manner and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. Notice of the sale of any such bonds shall be published at least one time not less than ten days prior to the date of sale and shall be so published in one or more newspapers published in Jackson, Mississippi, and having general circulation within the State of Mississippi, and in one or more other newspapers or financial journals as may be directed by the state bond commission.

HISTORY: Codes, 1942, § 7623-19; Laws, 1968, ch. 430, § 19, eff from and after passage (approved August 8, 1968).

§ 59-17-45. State bonds; disposition of proceeds from sale.

The proceeds of such state bonds issued pursuant to this chapter shall be paid into a special fund or funds in banks qualified to act as depositories for the participating counties in which the port or harbor is located, allocated in such equitable manner as the board may determine and such depositories shall qualify as such by depositing bonds or other securities authorized by law to secure deposits in state depositories. The proceeds of such bonds shall be used solely for payment of the cost of the planned development and the redeeming of any outstanding bonds and shall be disbursed upon order of the board with such restrictions, if any, as the resolution authorizing the issuance of the bonds may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the planned development, and the redeeming of any outstanding bonds, unless otherwise provided in the resolution authorizing the issuance of the bonds, additional bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution authorizing the issuance of bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which the bonds were issued, the surplus shall be paid into the fund established for the payment of the principal of and the interest on such bonds.

HISTORY: Codes, 1942, § 7623-20; Laws, 1968, ch. 430, § 20, eff from and after passage (approved August 8, 1968).

Cross References — Depositories for funds of local governments, see §§ 27-105-301 et seq.

§ 59-17-47. Withdrawals from special fund for payment of bonds.

The funds which are transferred from the sale of bonds under this chapter to the special fund in the qualified depositories set up for each separate port, harbor, or part thereof, may be withdrawn only in the following manner: said funds shall be paid by such qualified depositories upon warrants issued by the state auditor of public accounts, which warrants shall be issued upon requisition of the board or state inland port authority. All expenditures ordered by the board or state inland port authority shall be entered upon their minutes, and the board and each state inland port authority shall submit a full report of their work and all the transactions carried on by them, and a complete statement of all their revenues and expenditures to the legislature at each regular session of the legislature.

HISTORY: Codes, 1942, § 7623-28; Laws, 1968, ch. 430, § 28, eff from and after passage (approved August 8, 1968).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 59-17-49. Disposition of net revenues, rents, and earnings from port or harbor.

All net revenues, rents, and earnings from the operation or maintenance of any state-owned inland port or harbor, or any part thereof, shall be set aside by the board exclusively for the payment of any bonds issued by the state for such port or harbor, or any part thereof, and shall not be commingled with the funds of any other port or harbor, or any part thereof, but shall be expended by the board exclusively for the payment of such bonds as provided in Section 59-17-51, and, if no such bonds be outstanding, then by the state inland port authority for the improvement, operation, advancement, development, maintenance and advertising of the port to which such funds have accrued.

HISTORY: Codes, 1942, § 7623-10; Laws, 1968, ch. 430, § 10, eff from and after passage (approved August 8, 1968).

§ 59-17-51. Pledge of revenues, rents and earnings to payment of bonds; sinking fund.

The net revenues, rents, and earnings derived from any planned development or the net revenues, rents, and earnings received by the board produced by a state inland port, harbor, or part thereof, for which bonds have been issued, shall be pledged and allocated by the board to the payment of the principal of and interest on the bonds issued for such planned development as the resolution authorizing the issuance of the bonds may provide, and such pledge may include funds received from one or more or all sources available to such planned development and shall be set aside at regular intervals into a sinking fund, which sinking fund shall be pledged to and charged with the payment of:

(a) The interest upon such bonds as such interest shall accrue.

(b) The principal of the bonds as the same shall become due.

(c) The necessary charges of the paying agent or paying agents for paying principal and interest of and on such bonds.

(d) Any premium on bonds retired by call or purchase as may be provided therein.

(e) Net revenues shall be defined in the agreement between the board and the participating counties, or other authorized agency.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing any issue of bonds, but except as may otherwise be provided in such resolution, such sinking fund shall be a fund for the benefit of all bonds issued under such resolution, without distinction or priority of one over the other. Subject to the provisions of the resolution authorizing the issuance of the bonds, surplus moneys in the sinking fund may be applied to the purchase or redemption of any of such bonds, and any such bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

HISTORY: Codes, 1942, § 7623-21; Laws, 1968, ch. 430, § 21, eff from and after passage (approved August 8, 1968).

Cross References — Sinking funds for municipal harbor bonds, see §§ 59-3-5, 59-7-13, 59-7-427.

Sinking fund for joint bond issue by county and municipality, see § 59-9-9.

§ 59-17-53. Refunding bonds.

The board is authorized to provide by resolution for the issuance of refunding bonds by the state bond commission for the purpose of refunding any bonds issued under the provisions of this chapter and then outstanding, together with interest thereon to the date of such refunding bonds, and redemption premium thereon, if any. The issuance of such refunding bonds, the maturity, and all other details thereof, the rights of the holders thereof and the duties of the board and state inland port authority in respect thereto shall be governed by the provisions of this chapter, insofar as the same may be applicable.

HISTORY: Codes, 1942, § 7623-22; Laws, 1968, ch. 430, § 22, eff from and after passage (approved August 8, 1968).

Cross References — Refunding bonds generally, see §§ 31-15-1 et seq.

§ 59-17-55. Bonds as legal investments and security for deposits.

All bonds issued under the provisions of this chapter shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies, the board of trustees of the public employees' retirement system, and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

HISTORY: Codes, 1942, § 7623-23; Laws, 1968, ch. 430, § 23, eff from and after passage (approved August 8, 1968).

Cross References — Public employee's retirement benefits, see §§ 25-11-1 et seq.
Investment of excess social security funds, see § 25-11-121.
Investments by domestic insurance companies, see §§ 83-19-51, 83-19-53.
Investment of trust funds held by fiduciaries, see §§ 91-13-1 et seq.

§ 59-17-57. Representation of state bond commission by attorney general.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for, and the board is hereby authorized and empowered to expend any sum not exceeding Fifteen Thousand Dollars ($15,000.00) from the proceeds derived from the sale of any one (1) series of bonds authorized hereunder to pay for the cost of the approving attorney's fees, validating, printing and cost of delivery of bonds authorized under this chapter.

HISTORY: Codes, 1942, § 7623-27; Laws, 1968, ch. 430, § 27; Laws, 2012, ch. 546, § 28, eff from and after July 1, 2012.

Cross References — State bond commission, see §§ 31-17-1 et seq.

CHAPTER 19.

LANDINGS

Sec.

59-19-1. Initiation of proceedings to establish landing.
59-19-3. Notice of proceedings to establish landing.
59-19-5. Confirmation of report; assessment of damages.
59-19-7. Replacement of jurors; fines.
59-19-9. Appeal of assessment to circuit court.
59-19-11. Use of landing; penalty for misuse.
59-19-13. Compensation of participants.
59-19-15. Leasing of landing.

§ 59-19-1. Initiation of proceedings to establish landing.

Any three or more freeholders residing in any county bordering on the Mississippi River or other navigable river, bayou, bay, or inlet, may petition the board of supervisors of such county to cause a lot of ground, outside of a city, town, or village, on the bank of the river, bayou, bay, or inlet, to be designated and set apart as a boat landing and cotton-yard, for the use of the public, stating in the petition the name of the owner of the land proposed to be so taken; and said board shall thereupon appoint three of its members a committee to examine and determine whether such landing be required for public convenience, and, if so, to lay off and mark such lot of ground, not exceeding two acres, at such point as will be most convenient to the public.

HISTORY: Codes, 1857, ch. 22, art. 1; 1871, § 1881; 1880, § 916; 1892, § 2487; 1906, § 2824; Hemingway's 1917, § 5218; 1930, § 5321; 1942, § 7624.

Cross References — Definition of "navigable waters," see §§ 1-3-31, 51-1-1.
Small craft harbors, see §§ 59-15-1 et seq.

JUDICIAL DECISIONS

1. In general.

A grant on valuable consideration of the right perpetually to lay off new landings, as the river bank caves, to the exclusion of all others, on the water front of a large plantation, next a growing town, is not so unfair that chancery will decline to enforce it. Carson v. Percy, 57 Miss. 97, 1879 Miss. LEXIS 21 (Miss. 1879).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Highways, Streets, and Bridges §§ 20 et seq., 227 et seq.

79 Am. Jur. 2d, Wharves §§ 22-24.

§ 59-19-3. Notice of proceedings to establish landing.

The board of supervisors shall fix the time and place for the meeting of the committee provided for in Section 59-19-1, and the sheriff of the county shall deliver to the owner of the land proposed to be taken a copy of the order five days previous to the time of meeting. The committee shall make a full report of its proceedings, in writing, to the board of supervisors at its next regular meeting, and the board may confirm or set aside the report, and order another examination, or otherwise, at its discretion. And the owner of the land, having been served with notice as provided, shall take notice of all future proceedings. In case the owner be a non-resident, or cannot be found, he may be notified by publication of the order of the board in the same manner as publication is made for non-resident defendants in chancery.

HISTORY: Codes, 1857, ch. 22, art. 2; 1871, § 1882; 1880, § 917; 1892, § 2488; 1906, § 2825; Hemingway's 1917, § 5219; 1930, § 5322; 1942, § 7625.

§ 59-19-5. Confirmation of report; assessment of damages.

Should the report of the committee be confirmed, the board of supervisors shall direct its clerk to issue a writ to the sheriff of the county to summon twelve disinterested freeholders, competent jurors of the county, to meet on the premises, at a time to be fixed by the sheriff, of which the jurors and parties shall have five days' notice. The jury, being first sworn by the sheriff, shall assess the damages to be awarded to the owner of the land or other person, and shall reduce their finding to writing, and sign the same. The sheriff shall return the inquisition to the next meeting of the board, by whom the same shall be confirmed or set aside and a new jury ordered. And if the same shall be confirmed, the damages so awarded shall be paid by the parties applying to have said lot condemned and the costs of the proceeding. It shall not be lawful to enter upon or use the lot for any of the purposes for which it was condemned until the damages and the costs shall be paid or tendered.

HISTORY: Codes, 1857, ch. 22, art. 3; 1871, § 1883; 1880, § 918; 1892, § 2489; 1906, § 2826; Hemingway's 1917, § 5220; 1930, § 5323; 1942, § 7626.

Cross References — Taking private property for public use, see Miss. Const. Art. 3, § 17.

Eminent domain proceedings, see §§ 11-27-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Juror qualifications.

1. In general.

The right of eminent domain is paramount to the private right of property but compensation must first be made before private property can be taken for public use. Pearson v. Johnson, 54 Miss. 259, 1876 Miss. LEXIS 28 (Miss. 1876).

2. Juror qualifications.

The persons summoned by the sheriff must be freeholders and competent jurors. Board of Levee Comm'rs v. Allen, 60 Miss. 93, 1882 Miss. LEXIS 15 (Miss. 1882); Cage v. Trager, 60 Miss. 563, 1882 Miss. LEXIS 100 (Miss. 1882).

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Eminent Domain § 45.

§ 59-19-7. Replacement of jurors; fines.

If any of the jurors should fail to attend, the sheriff shall forthwith summon other proper persons in their places, and the defaulters shall be reported to the board of supervisors, and shall be fined not less than ten dollars nor more than twenty dollars, unless good cause against the same be shown.

HISTORY: Codes, 1857, ch. 22, art. 5; 1871, § 1885; 1880, § 920; 1892, § 2490; 1906, § 2827; Hemingway's 1917, § 5221; 1930, § 5324; 1942, § 7627.

Cross References — Juries in eminent domain proceedings, see § 13-5-89.

§ 59-19-9. Appeal of assessment to circuit court.

Should the owner of the land, or other person claiming compensation or damages, be not satisfied with the verdict of the jury, such person may appeal from the order of the board of supervisors confirming the same, within ten days after such order, to the circuit court; and the court may review the proceedings as to any matter of law and may award a trial de novo as to the amount of damages. If the order of the board confirming the finding of the jury be reversed on a question of law, the cause shall be remanded to the board for a new writ to be issued for the assessment of damages; or such other order shall be made by the circuit court as shall be proper.

HISTORY: Codes, 1857, ch. 22, art. 4; 1871, § 1884; 1880, § 918; 1892, § 2491; 1906, § 2828; Hemingway's 1917, § 5222; 1930, § 5325; 1942, § 7628.

§ 59-19-11. Use of landing; penalty for misuse.

After the termination of the proceedings and the payment or tender of the damages and costs, the applicants may erect warehouses, sheds, and such other buildings as may be necessary for the reception, storage, or shipment of cotton or other freight, and shall have such lot substantially inclosed, provided with suitable gates, and kept in good repair; and it shall not be lawful for any person to use the lot, shed, warehouses, or other buildings for any other purposes than those designated, under the penalty of five hundred dollars, to be recovered of the petitioners or of any person so using the said lot or buildings, by and for the use of the owner of the land, and the right to use the same for any purpose shall be forfeited.

HISTORY: Codes, 1857, ch. 22, art. 4; 1871, § 1884; 1880, § 919; 1892, § 2492; 1906, § 2829; Hemingway's 1917, § 5223; 1930, § 5326; 1942, § 7629.

§ 59-19-13. Compensation of participants.

The members of the committee shall receive the same pay as jurors in the circuit court; and the sheriff shall receive such further sum, in addition to his fees, as the board of supervisors may allow; all costs to be paid by the petitioners for the condemnation of the lot.

HISTORY: Codes, 1857, ch. 22, art. 6; 1871, § 1886; 1880, § 921; 1892, § 2493; 1906, § 2830; Hemingway's 1917, § 5224; 1930, § 5327; 1942, § 7630.

Cross References — Fee of jurors, see §§ 25-7-61, 25-7-63.

§ 59-19-15. Leasing of landing.

The board of supervisors may lease the lot or landing for a term not exceeding five years, the lessee to transact thereat only a general receiving and forwarding business; and, in case of a lease, the board shall fix, with power to alter, a schedule of rates and charges for receiving and forwarding freight, and require of the lessee a bond, payable to the county, in a penalty not less than five hundred dollars as shall be proper, conditioned to observe the terms of the lease and to perform the duties imposed on him by law. The lessee shall keep the schedule of rates conspicuously posted on the premises, and any overcharge shall subject the lessee and his sureties to a penalty of twenty dollars in favor of the party injured. A lease shall not abridge the right of any person to store and forward his own freight at the landing free of charge.

HISTORY: Codes, 1892, § 2494; 1906, § 2831; Hemingway's 1917, § 5225; 1930, § 5328; 1942, § 7631.

CHAPTER 21.

BOATS AND OTHER VESSELS

In General. 59-21-1
Numbering of Undocumented Vessels. 59-21-5
Manufacturing and Related Processes. 59-21-41
Boating Accidents. 59-21-51
Safety Equipment; Operation of Vessels. 59-21-81
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Enforcement; Penalties; Actions. 59-21-151

IN GENERAL

Sec.
59-21-1. Short title.
59-21-3. Definitions.

§ 59-21-1. Short title.

This chapter may be cited as the "Mississippi Boating Law of 1960."

HISTORY: Codes, 1942, § 8496-01; Laws, 1960, ch. 165, § 1, eff from and after passage (approved April 14, 1960).

Cross References — Small craft harbors, see §§ 59-15-1 et seq.

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. 2d, Boats and Boating §§ 4 et seq.

Practice References.
USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-21-3. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Length" means the length of the vessel measured from end to end over the deck excluding sheer.

(c) "Livery boat" means any boat for rent or hire.

(d) "Machinery" means inboard and outboard engines and all other types of motors or mechanical devices.

(e) "Motorboat" means any undocumented vessel propelled by machinery, whether or not such machinery is the principal source of propulsion. The term motorboat includes personal watercraft.

(f) "Operate" means to navigate or otherwise use a motorboat or vessel.

(g) "Operator" means the person who operates or who has charge of the navigation or use of a motorboat or a vessel.

(h) "Owner" means the person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitles him to such possession.

(i) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(j) "Ships' lifeboats" means lifeboats used solely for lifesaving purposes and does not include dinghies, tenders, speedboats, or other type of craft carried aboard a vessel and used for other than lifesaving purposes.

(k) "Undocumented vessel" means any vessel which is not required to have, and does not have, a valid marine document issued by the Bureau of Customs.

(*l*) "Vessel" means every description of watercraft, other than seaplane on the water, used or capable of being used as a means of transportation on water.

(m) "Waters of this state" means any waters within the territorial limits of this state, and the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of the state; however, "waters of this state" does not mean any private pond or lake which is not used for boat rentals or the charging of fees for fishing therein.

HISTORY: Codes, 1942, § 8496-02; Laws, 1960, ch. 165, § 2; Laws, 1962, ch. 220, § 1; Laws, 1964, ch. 468, § 1; Laws, 1968, ch. 265, § 2; Laws, 1973, ch. 409, § 1; Laws, 1994, ch. 353, § 2; Laws, 1994, ch. 640, § 2; Laws, 1996, ch. 545, § 2, eff from and after July 1, 1997.

Cross References — Definition of "navigable waters," see §§ 1-3-31, 51-1-1.

Exemption from ad valorem taxes of certain vessels, as defined in this section, while in hands of bona fide dealers, see § 27-31-1.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R.5th 347.

Am. Jur.

12 Am. Jur. 2d, Boats and Boating §§ 4 et seq.

NUMBERING OF UNDOCUMENTED VESSELS

Sec.

59-21-5. Requirement of numbering of undocumented vessels.

59-21-7. Numbering pattern.

59-21-9. Display of awarded number on vessel; use of other numbers prohibited.

59-21-11. Application for certificate of number.

59-21-13. Renewal of certificate of number; notice as to loss or destruction; replacement of certificate of number.

59-21-15. Certified statement of ownership as evidence of ownership; effect of liens as to determination of ownership; application for number by person obtaining title through default in terms of lien instrument.

Sec.
59-21-17. Contents of certificate of number; duties of commission; release of information on vessels; fees and charges for copying, certifying or searching records.
59-21-19. Size of certificate of number; temporary certificates; expiration dates; livery boat certificates; manufacturers' and dealers' certificates and numbers.
59-21-21. Surrender of certificate of number; notification of change of owner's address or loss, destruction, abandonment or transfer of vessel; application for number by new owner of vessel.
59-21-23. Cancellation or voiding of certificate of number.
59-21-25. Fees for certificates of number; disposition of proceeds.
59-21-27. Additional certificates of numbers for livery boats; fees; renewals.
59-21-29. Registration of serial numbers of outboard motors.
59-21-31. Alteration of identification numbers or marks on vessels, outboard motors, boats or boat trailers; purchase, sale or possession of vessels, outboard motors, boats or boat trailers with altered identifications; examinations and reports.
59-21-33. Seizure and forfeiture of vessels, outboard motors, boats and trailers with altered identification numbers or marks.

§ 59-21-5. Requirement of numbering of undocumented vessels.

All sailboats and every undocumented vessel equipped with propulsion machinery, whether or not such machinery is the principal source of propulsion, using the territorial and navigable waters of the State of Mississippi, and every such vessel owned in the State of Mississippi and using the high seas shall be numbered in accordance with this chapter, except:

(1) Foreign vessels temporarily using the navigable waters of the State of Mississippi;

(2) Public vessels of the United States;

(3) State and municipal vessels used solely for official business and displaying proper visual identification on its hull;

(4) Ships' lifeboats;

(5) Vessels designated by the appropriate federal authority;

(6) Undocumented vessels used exclusively for racing;

(7) Undocumented vessels operating under valid temporary certificates of number;

(8) Vessels already covered by a number in full force and effect awarded pursuant to federal law, or a federally approved numbering system of another state, provided that such vessels shall not have been within this state for a period in excess of sixty (60) days. Nothing in this section shall prohibit the numbering of any undocumented vessel upon the request of the owner.

HISTORY: Codes, 1942, § 8496-03; Laws, 1960, ch. 165, § 3; Laws, 1962, ch. 220, § 2; Laws, 1968, ch. 265, § 3; Laws, 1973, ch. 409, § 2; Laws, 1988, ch. 599, § 1, eff from and after July 1, 1988.

§ 59-21-7. Numbering pattern.

The numbering pattern to be used shall be as follows:

The number shall be divided into three (3) parts. The first part shall consist of the symbol MI; the second part shall consist of a numerical group having a maximum of four (4) digits; the third part shall consist of an alphabetical group having a maximum of two (2) letters. Each part shall be separated by hyphens or equivalent spaces.

Vessels shall be given numerical and alphabetical designations in the second and third groups in the order of their application.

The number awarded to a vessel under the provisions of this chapter shall remain the number for such vessel until the vessel is lost, destroyed, abandoned or registered in another state.

HISTORY: Codes, 1942, § 8496-05; Laws, 1960, ch. 165, § 5; Laws, 1962, ch. 220, § 3; Laws, 1964, ch. 468, § 2; Laws, 1986, ch. 364, § 1, eff from and after July 1, 1987.

§ 59-21-9. Display of awarded number on vessel; use of other numbers prohibited.

The number awarded shall be painted on or attached to each side of the bow of the vessel for which it was issued. The numbers shall be placed on each side of the forward half of the vessel in such position as to provide clear legibility for identification. The numbers shall read from left to right and shall be in block characters of good proportion not less than three inches in height. The numbers shall be of a color which will contrast with the color of the background and so maintained as to be clearly visible and legible, i.e., dark numbers on a light background, or light numbers on a dark background. No other number shall be carried on the bow of such vessel.

HISTORY: Codes, 1942, § 8496-06; Laws, 1960, ch. 165, § 6, eff from and after passage (approved April 14, 1960).

§ 59-21-11. Application for certificate of number.

The owner of any vessel required to be numbered under this chapter shall apply, within ten (10) days from the date of acquisition of the vessel, to the commission, on forms provided, for a certificate of number. The application for a number shall include the following:

(a) Name and address of owner.
(b) Date of birth of owner.
(c) Social Security number or driver's license number of the owner.
(d) Present citizenship of owner (county, state, country).
(e) County in which the vessel is principally used.
(f) Present number (if any).
(g) Hull material (wood, steel, aluminum, plastic, other).
(h) Type of propulsion (outboard, inboard, other).

(i) Type of fuel (gas, diesel, other).

(j) Length of vessel.

(k) Make and year built (if known).

(*l*) Statement as to use (pleasure, livery, dealer, manufacturer, commercial-passenger, commercial-fishing, commercial-other).

(m) A certification of ownership by the applicant.

(n) Serial number of outboard motor, boat and trailer owned by the applicant.

(o) Signature of owner.

(p) A receipt, sales or otherwise, which shows whether or not a sales or use tax was paid at the time of the purchase of the vessel. If the vessel was purchased outside the State of Mississippi, from and after July 1, 1978, and the tax for the privilege of using or consuming tangible personal property imposed by Section 27-67-5 was not paid at the time the vessel was acquired, then the owner shall be required to pay the tax as provided by the Mississippi Use Tax Law before a certificate of number can be issued.

HISTORY: Codes, 1942, § 8496-07; Laws, 1960, ch. 165, § 7; Laws, 1962, ch. 220, § 4; Laws, 1964, ch. 468, § 3; Laws, 1968, ch. 361, § 56; Laws, 1975, ch. 468, § 1; Laws, 1978, ch. 454, § 1; Laws, 1995, ch. 606, § 1, eff from and after July 1, 1995.

Cross References — County tax collectors, see §§ 27-1-1 et seq.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Boats and Boating §§ 23 et seq.

§ 59-21-13. Renewal of certificate of number; notice as to loss or destruction; replacement of certificate of number.

An application for renewal of a certificate of number shall be made by the owner on an application which must be received by the commission within the last ninety (90) days before the expiration date on the certificate of number. The same number will be issued upon renewal. If a certificate of number is lost or destroyed, the owner shall, within fifteen (15) days, notify the commission's office. The notification shall be in writing, shall describe the circumstances of the loss or destruction and shall be accompanied by the fee prescribed in this chapter. The certificate of number issued as a result of such report will replace the certificate so lost or destroyed.

The commission shall mail notice of expiration of numbers, together with an application for renewal of number, to each registered boat owner not less than sixty (60) days prior to the expiration date. The commission shall verify annually an up-to-date list of all numbers in effect and those numbers not renewed.

HISTORY: Codes, 1942, § 8496-08; Laws, 1960, ch. 165, § 8; Laws, 1968, ch. 361,

§ 57; Laws, 1975, ch. 468, § 2; Laws, 1986, ch. 364, § 2; Laws, 2000, ch. 369, § 1, eff from and after July 1, 2000.

§ 59-21-15. Certified statement of ownership as evidence of ownership; effect of liens as to determination of ownership; application for number by person obtaining title through default in terms of lien instrument.

The certified statement of ownership on the application for the award of a number shall constitute prima facie evidence of proof of ownership. Liens of all kinds, including reservations or transfers of title to secure debts or claims, will be disregarded in determining ownership under this chapter. A lienholder who acquires possession and title by virtue of default in the terms of the lien instrument, or any other person who acquires ownership through any such action of a lienholder, may apply for a number and shall attach to such application a signed statement explaining the facts in detail.

HISTORY: Codes, 1942, § 8496-09; Laws, 1960, ch. 165, § 9, eff from and after passage (approved April 14, 1960).

§ 59-21-17. Contents of certificate of number; duties of commission; release of information on vessels; fees and charges for copying, certifying or searching records.

(1) The certificate of number shall include the following:

(a) Name and address of owner.

(b) Date of birth of owner.

(c) Present citizenship of owner (county, state, country).

(d) County in which vessel is principally used.

(e) Present number (if any).

(f) Hull material (wood, steel, aluminum, plastic, other).

(g) Type of propulsion (outboard, inboard, other).

(h) Type of fuel (gas, diesel, other).

(i) Length of vessel.

(j) Make and year built (if known).

(k) Statement as to use (pleasure, livery, dealer, manufacturer, commercial-passenger, commercial-fishing, commercial-other).

(*l*) A certificate of ownership by the applicant.

(m) Signature of owner.

(n) Number awarded to vessel.

(o) Expiration date of certificate.

(p) Notice to the owner that he shall report within fifteen (15) days changes of ownership or address, and destruction or abandonment of vessel.

(q) Notice to the owner that the operator shall:

(i) Always carry this certificate on vessel when in use.

(ii) Report every accident involving injury or death to persons, or property damage over One Hundred Dollars ($100.00).

(iii) Stop and render aid or assistance if involved in a boating accident.

(2) The commission shall furnish and ensure that the forms required by this section and Section 59-21-13 are stocked at various county offices, boat companies, fishing camps, marinas, with enforcement officers, and at such other places as to make them available to boat owners. The commission shall award certificates of number and shall keep current a consolidated record of all certificates of numbers awarded and renewals of numbers.

(3) Upon request, information on ownership and identity of numbered vessels shall be available to federal, state and local officials, as needed, in any enforcement or assistance programs. The records pertaining to the numbering of undocumented vessels pursuant to this chapter are considered to be public records. Information based on such records may be released upon oral or written inquiry, subject only to reasonable restrictions necessary to carry on the business of the office. The commission may permit excerpts to be made or the copying or reproduction thereof by a private individual or concern. The fees and charges for copying, certifying or searching of records for information shall be assessed in accordance with usual fees allowed for such services.

HISTORY: Codes, 1942, § 8496-10; Laws, 1960, ch. 165, § 10; Laws, 1968, ch. 361, § 58; Laws, 1975, ch. 468, § 3; Laws, 1986, ch. 364, § 3, eff from and after July 1, 1987.

§ 59-21-19. Size of certificate of number; temporary certificates; expiration dates; livery boat certificates; manufacturers' and dealers' certificates and numbers.

(1) The certificate of number shall be pocket-size, approximately two and one-half inches (2-½″) by three and one-half inches (3-½″), and water resistant.

(2) Pending the issuance of the original certificate of number, the owner of the vessel may be furnished a temporary certificate of number valid for sixty (60) days from the date of issue. This temporary certificate shall be carried on board when the vessel is being operated.

(3) Each applicant for an original or transfer certificate of number, who is entitled to issuance thereof, shall be issued a certificate for a period of three (3) years from the last day of the month of receipt of the original or transfer certificate. This subsection shall not apply to the certificate of number of a livery boat.

(4) The certificate of number of a livery boat shall be plainly marked "livery boat." The description of the motor and type of fuel will be omitted from the certificate of number in any case where the motor is not rented with the boat. Original and renewal certificates of number of a livery boat shall be valid for a period of three (3) years and shall expire at midnight on June 30.

(5) Numbers and certificates of number awarded boats operated by manufacturers and dealers may be transferred from one (1) boat to another. In lieu of the description, the word "manufacturer" or "dealer," as appropriate,

will be plainly marked on each certificate. The manufacturer or dealer may have the number awarded printed upon or attached to a removable sign or signs to be temporarily mounted upon or attached to the boat being demonstrated or tested so long as the display meets the requirements of Section 59-21-9.

HISTORY: Codes, 1942, § 8496-11; Laws, 1960, ch. 165, § 11; Laws, 1962, ch. 220, § 5; Laws, 1964, ch. 468, § 4; Laws, 1979, ch. 383; Laws, 2006, ch. 521, § 2, eff from and after July 1, 2006.

§ 59-21-21. Surrender of certificate of number; notification of change of owner's address or loss, destruction, abandonment or transfer of vessel; application for number by new owner of vessel.

(1) When the owner of a numbered vessel removes his residence to another state, or the numbered vessel is not usually moored, docked, housed or garaged within this state, the owner shall, within ninety (90) days thereafter, surrender the certificate of number to the commission.

(2) When the owner of a numbered vessel changes his address from that shown on the certificate of number, he shall notify the commission of his new address within a period not to exceed fifteen (15) days from such change.

(3) When a numbered vessel is lost, destroyed, abandoned or transferred to another person, the certificate of number issued for the vessel shall be surrendered to the commission within a period not to exceed fifteen (15) days after such event. When the vessel is lost, destroyed or abandoned and the certificate of number has been destroyed, the owner shall, within fifteen (15) days, notify the commission by letter or postal card of the change in the status of the vessel.

The application for number by a new owner of a vessel shall, for the purpose of fee, be regarded as an original application for number, but where the vessel will continue in use in the state, the new number shall be identical with the previous one.

(4) A change of motor is not required to be reported to the commission.

(5) The owner of an undocumented vessel shall not have more than one (1) valid number or valid certificate of number for any one (1) vessel at any time.

HISTORY: Codes, 1942, § 8496-12; Laws, 1960, ch. 165, § 12; Laws, 1968, ch. 361, § 59; Laws, 1975, ch. 468, § 4; Laws, 1986, ch. 364, § 4, eff from and after July 1, 1987.

§ 59-21-23. Cancellation or voiding of certificate of number.

Certificates of number may be cancelled or voided under the following circumstances:

(a) Surrender of certificate for cancellation;

(b) Issuance of a new number for the same vessel;

(c) Issuance of a marine document by the Bureau of Customs for the same vessel;

(d) False or fraudulent certification in an application for number;
(e) Willful mutilation, defacing, or altering of a number.

HISTORY: Codes, 1942, § 8496-13; Laws, 1960, ch. 165, § 13; Laws, 1973, ch. 409, § 3; Laws, 1986, ch. 364, § 5, eff from and after July 1, 1987.

Cross References — Penalties for a violation of this section, see § 59-21-153.

§ 59-21-25. Fees for certificates of number; disposition of proceeds.

(1) Fees for the award of certificates of number for original, transfer, renewal, livery, dealer and duplicate shall be as follows:

(a) Less than 16 feet	$ 7.50
(b) 16 feet but less than 26 feet	$22.50
(c) 26 feet but less than 40 feet	$45.00
(d) 40 feet and over	$45.00
(e) Dealer number	$37.50
(f) Duplicate	$ 5.00
(g) Boat inspection fee	$10.00

(2) The fee provided for under subsection (1)(g) of this section shall only be charged when the owner of a boat requests the Department of Wildlife, Fisheries and Parks to perform an inspection of a boat serial number for the purpose of replacing or awarding a damaged or removed serial number.

(3) All fees for numbers and renewal of number shall be payable to the Mississippi Department of Wildlife, Fisheries and Parks to be deposited by the department in the State Treasury in a special fund to be designated as the Fisheries and Wildlife Fund, which shall be disbursed upon the recommendation of the department as may be appropriated by the Legislature. The State Treasurer shall release to the department such sums as are required to defray all administrative costs of the boat registration fee division of the department and to improve the law enforcement capability of the department on the inland and marine waters of the State of Mississippi and as may be budgeted by the department for the purpose of paying the cost of the administration of this chapter for education on water safety, improvement of water safety and motorboating facilities in the state, and advertising and promoting the waterways of the state. Any and all revenue over and above the actual administrative cost of implementing this chapter shall be used to fund salaries of additional conservation officers in all eighty-two (82) counties.

HISTORY: Codes, 1942, § 8496-14; Laws, 1960, ch. 165, § 14; Laws, 1964, ch. 468, § 5; Laws, 1968, ch. 361, § 60; Laws, 1975, ch. 468, § 5; Laws, 1982, ch 365, § 13; Laws, 1988, ch. 599, § 2; Laws, 2000, ch. 516, § 128; Laws, 2006, ch. 521, § 1, eff from and after July 1, 2006.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of paragraph (3). The word "act" was changed to "chapter." The Joint Committee ratified the correction at its June 26, 2007, meeting.

Editor's Notes — Section 49-1-4 provides that the term "Department of Wildlife Conservation" shall mean the "Department of Wildlife, Fisheries and Parks".

Cross References — Apportionment of taxes imposed on gasoline, diesel fuel, and kerosene to Fisheries and Wildlife Fund, see § 27-5-101.

Fisheries and wildlife fund, see § 49-5-21.

Additional certificates of numbers for livery boats, see § 59-21-27.

§ 59-21-27. Additional certificates of numbers for livery boats; fees; renewals.

An owner of more than one livery boat shall be entitled to be awarded certificates of number for all such vessels on the payment of fees provided in Section 59-21-25. Each vessel shall have a separate and distinct number and shall be issued a separate certificate of number. Certificates of number under this section may be renewed on the payment of a single fee provided in Section 59-21-25.

HISTORY: Codes, 1942, § 8496-15; Laws, 1960, ch. 165, § 15; Laws, 1962, ch. 220, § 6; Laws, 1964, ch. 468, § 6; Laws, 1988, ch. 599, § 3, eff from and after July 1, 1988.

§ 59-21-29. Registration of serial numbers of outboard motors.

Each person registering a boat or boats under this chapter may at the same time register with the commission the serial numbers of all outboard motors owned by said person.

HISTORY: Codes, 1942, § 8496-25; Laws, 1960, ch. 165, § 25; Laws, 1973, ch. 458, § 3, eff from and after passage (approved April 9, 1973).

§ 59-21-31. Alteration of identification numbers or marks on vessels, outboard motors, boats or boat trailers; purchase, sale or possession of vessels, outboard motors, boats or boat trailers with altered identifications; examinations and reports.

No person shall remove, change or in any manner mutilate or deface any number awarded a vessel, or any motor number or other stamped, cast, or forged numbers or letters or other marks upon any vessel, outboard motor, boat or boat trailer, or assist in so doing, or, having knowledge of such change, fail to report the same to the Department of Wildlife, Fisheries and Parks in which such vessel, motor, boat or boat trailer is usually moored, docked, housed or garaged. Any person or owner, being in possession of a vessel, outboard motor, boat or boat trailer, shall examine the same and report such changes to the Department of Wildlife, Fisheries and Parks.

No person shall buy, sell or possess a vessel, outboard motor, boat or boat trailer on which any awarded number or identification number has been removed, changed, mutilated or defaced. It shall be the duty of any person buying, or any lienholder financing, a vessel, outboard motor, boat or boat trailer, to inspect the vessel, outboard motor, boat or boat trailer prior to its purchase or creation of a lien thereon, to ensure that it is in compliance with this section.

HISTORY: Codes, 1942, § 8496-25; Laws, 1960, ch. 165, § 25; Laws, 1993, ch. 480, § 1; Laws, 1995, ch. 551, § 2, eff from and after July 1, 1995.

§ 59-21-33. Seizure and forfeiture of vessels, outboard motors, boats and trailers with altered identification numbers or marks.

All vessels, outboard motors, boats and trailers having awarded numbers or identification numbers or marks which have been removed, changed, mutilated or defaced contrary to this chapter are subject to forfeiture. Any such property shall be seized by any conservation officer or enforcement officer of the Department of Wildlife, Fisheries and Parks, or other officer of the law including any sheriff or deputy sheriff. Upon the seizure of such property, forfeiture proceedings shall be instituted pursuant to Sections 49-7-251 through 49-7-257. Provided, however, that any such property which has previously been registered or titled within the State of Mississippi is not subject to forfeiture if the application for registration or title contained no false or fraudulent information, or if the property seized has a value less than One Thousand Dollars ($1,000.00).

HISTORY: Codes, 1942, § 8496-25; Laws, 1960, ch. 165, § 25; Laws, 1982, ch. 365, § 12; Laws, 1991, ch. 522, § 6; Laws, 1993, ch. 480, § 2; Laws, 1995, ch. 551, § 3, eff from and after July 1, 1995.

Cross References — Fisheries and wildlife fund, see § 49-5-21.

Procedure for forfeiture of property seized for violation of fish and game laws, see § 49-7-251 et seq.

MANUFACTURING AND RELATED PROCESSES

Sec.
59-21-41. Duplication of boat hulls and parts by direct molding process.

§ 59-21-41. Duplication of boat hulls and parts by direct molding process.

(1) As used in this section:

(a) "Direct molding process" means any process in which the original manufactured boat hull or component part of a boat is itself used as a plug for the making of the mold, which is then used to manufacture a duplicate item.

(b) "Mold" means a matrix or form in which a substance or material is shaped.

(c) "Plug" means a device or model used to make a mold for the purpose of exact duplication.

(2) It is unlawful for any person to use the direct molding process to duplicate for the purpose of sale any manufactured boat hull or component part of a boat made by another without the written permission of that other person.

(3) The provisions of this section shall apply only to boat hulls or component parts of boats duplicated using a mold made on or after the effective date of this section.

(4) Any person who suffers injury or damage as the result of a violation of the provisions of this section may bring an action in the chancery court for an injunction prohibiting such violations. In addition, such person shall be entitled to actual damages incurred as a result of such violation, reasonable attorney's fees, and costs.

HISTORY: Laws, 1985, ch. 355, eff from and after passage (approved March 19, 1985).

BOATING ACCIDENTS

Sec.

59-21-51. Duty to report boating accidents; "boating accident" defined.
59-21-53. Time for submission of accident reports; contents; distribution; disclosure.
59-21-55. Duty of vessel operator to remain at scene of accident and render aid and assistance; liability for rendering assistance.

§ 59-21-51. Duty to report boating accidents; "boating accident" defined.

In the case of a boating accident involving collision, accident or other casualty involving a motorboat or vessel subject to this chapter, while operated upon the waters of this state, the operator thereof, if the collision, accident or other casualty results in death to any person, injury causing any person to remain incapacitated for a period in excess of twenty-four (24) hours, or damage to property in excess of one hundred dollars ($100.00), shall file, on forms provided, with the commission an accident report with a full description of the collision, accident or other casualty, including such other information as is required under the provisions of this chapter. The commission shall furnish copies of reports to the appropriate federal agencies and sheriff of the county in which such accident or other casualty takes place.

For the purpose of this chapter, a "boating accident" means a collision, accident or other casualty involving (1) an undocumented motorboat or (2) any other undocumented vessel used for pleasure or recreational purposes. A vessel subject to this chapter is considered to be involved in a "boating accident" whenever the occurrence results in damage by or to the vessel or its equipment; in injury or loss of life to any person, or in the disappearance of any person from on board under circumstances which indicate the possibility of death or injury. A "boating accident" includes, but is not limited to, capsizing, collision, foundering, flooding, fire, explosion and the disappearance of a vessel other than by theft. A report is required whenever a vessel subject to this chapter is involved in a "boating accident" which results in any one or more of the following:

(1) Loss of life.

(2) Injury causing any person to remain incapacitated for a period in excess of twenty-four (24) hours.

(3) Actual physical damage to property (including vessels) in excess of one hundred dollars ($100.00).

HISTORY: Codes, 1942, § 8496-16; Laws, 1960, ch. 165, § 16; Laws, 1973, ch. 372, § 1, eff from and after July 1, 1973.

RESEARCH REFERENCES

ALR.

Liability for injury or damage by motorboat. 63 A.L.R.2d 343.

Am. Jur.

12 Am. Jur. 2d, Boats and Boating §§ 17 et seq.

43 Am. Jur. Proof of Facts 2d 395, Negligent Operation of a Boat.

Practice References.

USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-21-53. Time for submission of accident reports; contents; distribution; disclosure.

Whenever death results from a boating accident, a written report shall be submitted within forty-eight (48) hours. For every other reportable boating accident a written report shall be submitted within five (5) days after such accident. The operator(s) of the boat(s) shall prepare and submit the written report(s) to the commission. Every written report shall contain the following information:

(1) The numbers and/or names of vessels involved.

(2) The locality where the accident occurred.

(3) The time and date when the accident occurred.

(4) Weather and sea conditions at time of accident.

(5) The name, address, age, and boat operating experience of the operator of the reporting vessel.

(6) The names and addresses of operators of other vessels involved.

(7) The names and addresses of the owners of vessels or property involved.

(8) The names and addresses of any person or persons injured or killed.

(9) The nature and extent of injury to any person or persons.

(10) A description of damage to property (including vessels) and estimated cost of repairs.

(11) A description of the accident (including opinions as to the causes).

(12) The length, propulsion, horsepower, fuel and construction of the reporting vessel.

(13) Names and addresses of known witnesses.

The commission shall ensure that the forms required by this section are stocked at various county offices, boat companies, fishing camps, marinas, law enforcement offices, and at such other places as to make them reasonably available at all times.

The commission shall consolidate such reports and transmit the same to the appropriate agencies. Boating accident reports shall not be a public record nor made available for public distribution, except as otherwise provided by law.

The commission may, upon written request of any person involved in a boating accident or upon written request of the representative of his or her estate, his or her surviving spouse, or one or more of his or her surviving next of kin, disclose to such requester or his or her legal counsel or a representative of his insurer any information contained in such report except the parties' version of the accident as set out in the written report filed by such parties.

HISTORY: Codes, 1942, § 8496-17; Laws, 1960, ch. 165, § 17; Laws, 1973, ch. 372, § 2; Laws, 1998, ch. 378, § 1, eff from and after July 1, 1998.

RESEARCH REFERENCES

ALR.

Liability for injury or damage by motorboat. 63 A.L.R.2d 343.

Am. Jur.

12 Am. Jur. 2d, Boats and Boating §§ 17 et seq.

§ 59-21-55. Duty of vessel operator to remain at scene of accident and render aid and assistance; liability for rendering assistance.

(1) It shall be the duty of the operator of any vessel involved in a boating accident to remain at the scene of such accident until he has rendered all necessary aid and assistance, including the carrying or the making of arrangements for the carrying of any person involved in such accident to a physician, surgeon, or hospital for medical, surgical or hospital treatment, if necessary, or if such carrying is requested by such injured person, and it is the further duty of the operator of any vessel or vessels involved in a boating accident required to be reported under this chapter to report the same as herein provided.

(2) Any person who complies with subsection (1) of this section or who gratuitously and in good faith and in the exercise of reasonable care renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act committed in good faith and in the exercise of reasonable care or omission in good faith and in the exercise of reasonable care by such person in providing or arranging salvage, towage, medical treatment, or other assistance where the assisting person acts as an ordinary, reasonable, prudent man would have acted under the same or similar circumstances.

HISTORY: Codes, 1942, § 8496-18; Laws, 1960, ch. 165, § 18; Laws, 1973, ch. 372, § 3; Laws, 1979, ch. 376, § 3, eff from and after July 1, 1979.

Cross References — "Good Samaritan" statute, see § 73-25-37.

RESEARCH REFERENCES

ALR.

Liability for injury or damage by motorboat. 63 A.L.R.2d 343.

Liability of owner or operator of pleasure boat for injury or death of guest passenger. 35 A.L.R.4th 104.

Construction and application of "Good Samaritan" statutes. 68 A.L.R.4th 294.

Rescue doctrine: liability of one who negligently causes motor vehicle accident for injuries to person subsequently attempting to rescue persons or property. 73 A.L.R.4th 737.

Rescue Doctrine: applicability and application of comparative negligence principles. 75 A.L.R.4th 875.

Am. Jur.

12 Am. Jur. 2d, Boats and Boating §§ 17 et seq.

7 Am. Jur. Proof of Facts 3d 415, Imminent Peril Inviting Rescue Attempt.

Law Reviews.

1979 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 887, December, 1979.

SAFETY EQUIPMENT; OPERATION OF VESSELS

Sec.	
59-21-81.	Requirements as to lights, personal flotation devices and other safety equipment; children required to wear personal flotation devices; vessels to be seaworthy; safety requirements for operation of personal watercraft.
59-21-83.	Operation of vessel in reckless or negligent manner, while operator is incapacitated, etc.
59-21-85.	Age restrictions on operation of motorboats.
59-21-87.	Regulation of water skiing, aquaplaning, etc.
59-21-89.	Use of oscillating or rotating blue lights on vessels.

§ 59-21-81. Requirements as to lights, personal flotation devices and other safety equipment; children required to wear personal flotation devices; vessels to be seaworthy; safety requirements for operation of personal watercraft.

(1) Every vessel shall have on board a Coast Guard approved personal flotation device for each person aboard such vessel, and every person twelve (12) years or younger on board a motorboat, sailboat, or vessel which measures less than twenty-six (26) feet in length shall wear a type I, II, or III Coast Guard approved personal flotation device while such motorboat, sailboat, or vessel is underway. For the purpose of this section "underway" shall mean at all times except when a motorboat, sailboat, or vessel is anchored, moored, or aground. Every vessel shall have lights during the hours of darkness, which comply with all federal regulations applicable to vessels of its classification. Such vessel shall not be operated unless in a safe and seaworthy condition; the owner and operator shall employ such safety devices as may be necessary for the safe operation of such vessel, including an efficient natural or mechanical

ventilating system when necessary for safe operation. In addition to the requirements imposed by this section, all vessels shall comply with all federal regulations applicable to vessels of such classification.

(2) For purposes of this subsection, "personal watercraft" means a vessel which uses an inboard motor powering a water jet pump and which is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel. A person shall not operate a personal watercraft unless each person on board or being towed behind is wearing a type I, type II or type III, personal flotation device approved by the United States Coast Guard.

HISTORY: Codes, 1942, § 8496-19; Laws, 1960, ch. 165, § 19; Laws, 1973, ch. 397, § 1; Laws, 1988, ch. 434; Laws, 2001, ch. 496, § 1, eff from and after passage (approved Mar. 24, 2001).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence.

1. In general.

Failure of farmer to provide life preserver to fishermen who rent boat to fish on lake owned by farmer is negligence per se where boat sinks and one of fishermen drowns. Byrd v. McGill, 478 So. 2d 302, 1985 Miss. LEXIS 2312 (Miss. 1985).

2. Evidence.

It was not error for trial court to preclude admission into evidence of actual statutes and regulations intended to counter allegations of negligent design and strict products liability, where such statutes and regulations were in no way related to particular violation alleged and all relevant and material evidence was allowed. Detroit Marine Engineering v. McRee, 510 So. 2d 462, 1987 Miss. LEXIS 2366 (Miss. 1987).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R.5th 347.

Practice References.

USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-21-83. Operation of vessel in reckless or negligent manner, while operator is incapacitated, etc.

No vessel shall be operated within this state in a reckless or negligent manner or at a rate of speed greater than is reasonable and prudent under the then existing circumstances or when the operator is so physically or mentally incapacitated as to be incapable of safely operating such vessel, or while the operator is under the influence of intoxicating liquor or narcotics, or when such vessel is overloaded beyond its reasonable carrying capacity. The provisions of this section shall be applicable to all watercraft operating on the waters of this state inclusive of, but not limited to, undocumented or unnumbered vessels and shall specifically include all vessels exempted from numbering by Section 59-21-5 and surfboards, aquaplanes, airboats, water skis or other watercraft.

HISTORY: Codes, 1942, § 8496-20; Laws, 1960, ch. 165, § 20; Laws, 1964, ch. 468, § 7, eff from and after June 15, 1964.

JUDICIAL DECISIONS

1. Relation to Mississippi Torts Claim Act.

Court of appeals erred in reversing the trial court's judgment because it ignored substantial, credible, and reasonable evidence that supported the trial court's finding that Mississippi Department of Wildlife, Fisheries, and Parks officers acted with reckless disregard for the safety of others; the trial court's finding that the officers' testimony was not credible because substantial, credible, and reasonable evidence in the record contradicted the testimony could not be discarded. Miss. Dep't of Wildlife v. Webb, 248 So. 3d 772, 2018 Miss. LEXIS 127 (Miss. 2018).

Circuit court improperly ruled for a family in their action claiming that Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) conservation officers acted with reckless disregard for the safety of boaters because it erroneously applied the legal standard for reckless disregard; the violation of a MDWFP standard operation procedure failed to establish reckless disregard because no provision prohibited officers from requesting a boater pull to a safe area to conduct a traffic stop. Miss. Dep't of Wildlife, Fisheries, & Parks v. Webb, 248 So. 3d 823, 2017 Miss. App. LEXIS 217 (Miss. Ct. App. 2017), rev'd, 248 So. 3d 772, 2018 Miss. LEXIS 127 (Miss. 2018).

Circuit court improperly ruled for a family in their action against the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) because it erroneously applied the legal standard for reckless disregard under the Mississippi Torts Claim Act; MDWFP officers possessed the discretion to request that boaters pull out of the hazardous and high-traffic area of a river, and the MDWFP possessed the authority to regulate the boating traffic on the river and the discretion to do so in a safe manner. Miss. Dep't of Wildlife, Fisheries, & Parks v. Webb, 248 So. 3d 823, 2017 Miss. App. LEXIS 217 (Miss. Ct. App. 2017), rev'd, 248 So. 3d 772, 2018 Miss. LEXIS 127 (Miss. 2018).

RESEARCH REFERENCES

ALR.

Liability for injury or death of nonparticipant caused by water skiing. 67 A.L.R.3d 1218.

Liability of owner or operator of boat livery for injury to patron. 94 A.L.R.3d 876.

Criminal liability for injury or death caused by operation of pleasure boat. 8 A.L.R.4th 886.

Liability of owner or operator of pleasure boat for injury or death of guest passenger. 35 A.L.R.4th 104.

What constitutes unlawful conduct subject to federal statutes prohibiting drug-related activities aboard United States vessels (21 USCS §§ 955 et seq). 73 A.L.R. Fed. 586.

Am. Jur.

5 Am. Jur. Pl & Pr Forms (Rev), Boats and Boating, Forms 21 et seq. (personal injuries; swimmers and water skiers).

5 Am. Jur. Pl & Pr Forms (Rev), Boats and Boating, Forms 61 et seq. (property damage).

36 Am. Jur. Proof of Facts 2d 525, Liability for Negligent Operation of Ski Boat.

43 Am. Jur. Proof of Facts 2d 395, Negligent Operation of a Boat.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

Practice References.

USCS National Guard/Navigation and Navigable Waters Set: Titles 32-34 (Michie).

§ 59-21-85. Age restrictions on operation of motorboats.

(1)(a) No motorboat required to be numbered under this chapter shall be operated by any person who is under the age of twelve (12) years, unless he possesses a certificate as required under this section and is also accompanied by a parent, guardian or other person who is at least twenty-one (21) years of age and qualified and capable of operating the same.

(b) A motorboat required to be numbered under this chapter may not be operated by any person born after June 30, 1980, unless the person has completed a course in boating safety conducted or approved by the Department of Wildlife, Fisheries and Parks, and the person has in his immediate possession while operating a motorboat a certificate of satisfactory completion of the boating safety course.

(c) The requirement of possessing a certificate under this subsection shall not apply to any person operating a motorboat that is rented from a person engaged in the business of renting motorboats.

(2) Boating safety courses shall be held by the Department of Wildlife, Fisheries and Parks, or instructors designated and approved by the department. The Department of Wildlife, Fisheries and Parks shall issue a certificate to each person who satisfactorily completes the boating safety course.

(3) In lieu of any other penalties provided for a violation of this chapter, a violation of this section is punishable by a fine of not less than Twenty-Five Dollars ($25.00) nor more than Fifty Dollars ($50.00).

HISTORY: Codes, 1942, § 8496-20; Laws, 1960, ch. 165, § 20; Laws, 1964, ch. 468, § 7; Laws, 1973, ch. 397, § 2; Laws, 1996, ch. 545, § 1, eff from and after July 1, 1997.

§ 59-21-87. Regulation of water skiing, aquaplaning, etc.

No person shall operate a motorboat on any waters of this state while towing a person on water skis, or on an aquaplane or similar device, without an observer in the boat in addition to the operator. Such observer shall be above ten years of age.

The provisions of the first paragraph of this section do not apply to a person engaged in a professional exhibition or a person participating in an official regatta, motorboat race, marine parade, tournament or exhibition.

No person shall operate or manipulate any motorboat, tow rope or other device by which the direction or location of water skis, aquaplane, or similar device may be affected or controlled in such a way as to cause the water skis, aquaplane, or similar device, or any person thereon to collide or strike against any object or person, except slalom buoys, ski jumps or like objects used normally in competitive or recreational skiing.

HISTORY: Codes, 1942, § 8496-21; Laws, 1960, ch. 165, § 21; Laws, 1962, ch. 220, § 8, eff from and after passage (approved May 1, 1962).

JUDICIAL DECISIONS

1. In general.

Reasonable care does not require amusement park proprietor to assume control over actual operation of, or to instruct or inquire into the qualifications of, observers in boat towing water skiers. Hennington v. Curtis, 248 Miss. 435, 160 So. 2d 193, 1964 Miss. LEXIS 272 (Miss. 1964).

RESEARCH REFERENCES

ALR.

Products liability: skiing equipment. 76 A.L.R.4th 256.

Liability for injuries to, or death of, water-skiers. 34 A.L.R.5th 77.

Am. Jur.

5 Am. Jur. Pl & Pr Forms (Rev), Boats and Boating, Forms 21 et seq. (personal injuries; swimmers and water skiers).

5 Am. Jur. Pl & Pr Forms (Rev), Boats and Boating, Forms 61 et seq. (property damage).

§ 59-21-89. Use of oscillating or rotating blue lights on vessels.

(1) It is unlawful for any person, other than a law enforcement officer on duty, to use or display oscillating or rotating blue lights on a vessel operating on the public waters of this state. Upon the approach of an authorized law enforcement vessel operating a strobe, rotating or oscillating blue light or giving audible signal by siren or both, the operator of a vessel shall yield the right-of-way and shall stop and remain in position until the authorized law enforcement vessel has passed, except when otherwise directed by a law enforcement officer.

(2) A person violating this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00).

HISTORY: Laws, 1994, ch. 353, § 1; Laws, 1994, ch. 640, § 1; reenacted and amended, Laws, 1995, ch. 476; reenacted and amended, Laws, 1995, ch. 600, § 1, eff from and after July 2, 1995.

Editor's Notes — Section 59-21-89 was added by Laws, 1994, ch. 353 and by Laws, 1994, ch. 640, § 1. The only difference in the version of the section as added by the two different chapters is that chapter 640 added a subsection (3), which repeals the section from and after July 1, 1995, and which does not appear in chapter 353. At the direction of the Attorney General's office, this section reads as added by chapter 640.

BOAT AND WATER SAFETY COMMISSION

Sec.

59-21-111. Assumption of duties and responsibilities of Boat and Water Safety Commission.
59-21-113 and 59-21-115. Repealed.
59-21-117. Promulgation of rules and regulations generally.
59-21-119. Purchase, operation and maintenance of equipment; purchase of property damage insurance.

Sec.
59-21-121. Regulation of regattas, boat races, exhibitions, etc.
59-21-123. Enforcement officers; employment and compensation.
59-21-125. Enforcement officers; bond.
59-21-127. Enforcement officers; powers and duties.
59-21-129. Adoption of special rules and regulations.

§ 59-21-111. Assumption of duties and responsibilities of Boat and Water Safety Commission.

(1) The Mississippi Commission on Wildlife, Fisheries and Parks shall be the Mississippi Boat and Water Safety Commission, and shall exercise the duties and responsibilities of the Mississippi Boat and Water Safety Commission through the Mississippi Department of Wildlife, Fisheries and Parks, insofar as practicable under the provisions of Chapter 4 of Title 49, Mississippi Code of 1972; except on marine waters under the jurisdiction of the Commission on Marine Resources.

(2) The Commission on Marine Resources shall exercise the duties and responsibilities of the Mississippi Boat and Water Safety Commission through the Mississippi Department of Marine Resources on the marine waters of the state. The Commission on Marine Resources shall not exercise any powers related to numbering of undocumented vessels. Those powers are vested exclusively in the Commission on Wildlife, Fisheries and Parks.

HISTORY: Codes, 1942, § 8496-22; Laws, 1960, ch. 165, § 22; Laws, 1964, ch. 468, § 8; Laws, 1968, ch. 266, § 1; Laws, 1978, ch. 484, § 29; Laws, 1994, ch. 353, § 3; Laws, 1994, ch. 640, § 3; Laws, 1995, ch. 439, § 1; Laws, 1999, ch. 585, § 8, eff from and after July 1, 1999.

§§ 59-21-113 and 59-21-115. Repealed.

Repealed by Laws, 1978, ch. 484, § 30, eff from and after July 1, 1979.

59-21-113. [Codes, 1942, § 8496-22; Laws, 1960, ch. 165, § 22; Laws, 1964, ch. 468,§ 8; Laws, 1968, ch. 266, § 1]

59-21-115. [Codes, 1942, § 8496-23; Laws, 1960, ch. 165, § 23; Laws, 1964, ch. 468, § 9; Laws, 1968, ch. 265, § 4]

Editor's Notes — Former § 59-21-113 provided for the terms of office and compensation of the Mississippi Boat and Water Safety Commission members.

Former § 59-21-115 provided for office space and supplies for the Boat and Water Safety Commission.

§ 59-21-117. Promulgation of rules and regulations generally.

(1) The commission shall adopt and promulgate rules and regulations for the administration and enforcement of the provisions of this chapter, and to advertise and promote the fresh waterways of the state.

(2) The Commission on Marine Resources shall adopt and promulgate rules and regulations for the administration and enforcement of Sections

59-21-111 through 59-21-129. The Commission on Marine Resources shall adopt rules and regulations in accordance with subsections (4) and (5).

(3) The provisions of Sections 59-21-117 through 59-21-127 shall be applicable to all waters of this state that are under the jurisdiction of the State of Mississippi.

(4) Before any rules and regulations are adopted, the proposed rules and regulations shall be reduced to writing and a public hearing shall be held after at least thirty (30) days' notice of the hearing. The notice shall be published at least one (1) time in a newspaper of general circulation in this state. A copy of the proposed rules and regulations shall be furnished to the sheriff of each county affected at least thirty (30) days prior to the hearing. The hearing shall be held at a place convenient to the largest number of owners of vessels affected by the proposed rules and regulations or, if of general statewide application, shall be held in the City of Jackson, Mississippi.

(5) A copy of the regulations adopted pursuant to this section, and amendments thereto, shall be filed in the office of the commission adopting the regulations and in the office of the sheriff of each county affected where the same shall be maintained as a public record. The rules and regulations shall be published in a convenient form and shall be given to each recipient of an original, renewed, transferred, or a recorded certificate of number.

HISTORY: Codes, 1942, § 8496-23; Laws, 1960, ch. 165, § 23; Laws, 1964, ch. 468, § 9; Laws, 1968, ch. 265, § 4; Laws, 1973, ch. 458, § 1; Laws, 1995, ch. 439, § 2, eff from and after July 1, 1995.

OPINIONS OF THE ATTORNEY GENERAL

The commission is authorized, after notice and public hearing as provided by this section, to make such special rules and regulations with reference to the operation, equipment or safety of vessels or motorboats on any such waters of the state. Whitmore, May 10, 1995, A.G. Op. #95-0148.

RESEARCH REFERENCES

ALR.

Public regulations requiring mufflers or similar noise-preventing devices on motor vehicles, aircraft, or boats. 49 A.L.R.2d 1202.

§ 59-21-119. Purchase, operation and maintenance of equipment; purchase of property damage insurance.

The commission is hereby authorized to purchase, operate and maintain such motor vehicles, boats, trailers, motors and other equipment as may be deemed necessary and proper for the administration of this chapter. The commission may purchase property damage insurance on its motor vehicles, boats, trailers, motors and other equipment, and may expend funds from any available source for the purpose of obtaining such insurance.

HISTORY: Codes, 1942, § 8496-23; Laws, 1960, ch. 165, § 23; Laws, 1964, ch.

468, § 9; Laws, 1968, ch. 265, § 4; Laws, 2007, ch. 394, § 1, eff from and after passage (approved Mar. 15, 2007).

§ 59-21-121. Regulation of regattas, boat races, exhibitions, etc.

Any person or organization sponsoring a regatta, motorboat or other boat race, marine parade, tournament or exhibition shall be responsible for providing adequate protection from marine traffic interference and hazards. The commission may adopt and may from time to time amend regulations governing the same.

HISTORY: Codes, 1942, § 8496-23; Laws, 1960, ch. 165, § 23; Laws, 1964, ch. 468, § 9; Laws, 1968, ch. 265, § 4, eff from and after passage (approved July 4, 1968).

§ 59-21-123. Enforcement officers; employment and compensation.

The executive director with the approval of the commission may employ and fix the duties of such clerical assistants, enforcement officers and other agents as may be deemed necessary to carry out the provisions of this chapter, and to fix their tenure of employment and compensation therefor; provided, however, that enforcement officers shall meet the same requirements and qualifications as required for conservation officers in Section 49-1-15(1) and (2).

The salaries of such paid employees shall be paid out of any funds which may be received by the commission for the administration of this chapter. All salaries and positions are to conform with the requirements of the state classification commission law of 1970. In addition to their salaries, the enforcement officers may be paid in accordance with the provisions of Section 25-3-41, Mississippi Code of 1972, for their necessary travel when performed by private conveyance and will be reimbursed for their actual expenses not to exceed eighteen dollars ($18.00) per day while actually engaged in the performance of their duties, to be allowed only on expense account itemized and filed by them with, and approved by, the executive director and the commission.

HISTORY: Codes, 1942, § 8496-23; Laws, 1960, ch. 165, § 23; Laws, 1964, ch. 468, § 9; Laws, 1968, ch. 265, § 4; Laws, 1973, ch. 458, § 1; Laws, 1980, ch. 553, § 3, eff from and after July 1, 1980.

Editor's Notes — Section 49-1-1 provides that the word "director" shall mean and refer to the Executive Director of the Department of Wildlife, Fisheries and Parks.

Cross References — Statewide personnel system, see §§ 25-9-101 et seq.

§ 59-21-125. Enforcement officers; bond.

Each enforcement officer shall execute and file with the state treasurer a good and sufficient surety bond in the sum of two thousand dollars ($2,000.00), conditioned on the faithful performance of his respective duties. Each enforcement officer shall be reimbursed by the commission for the premiums on his bond.

HISTORY: Codes, 1942, § 8496-23; Laws, 1960, ch. 165, § 23, 1964, ch. 468, § 9; Laws, 1968, ch. 265, § 4, eff from and after passage (approved July 4, 1968).

§ 59-21-127. Enforcement officers; powers and duties.

It shall be the duty of all enforcement officers to enforce, and to obey and carry out all instructions, directions, rules and regulations of the commission with respect to the enforcement of the provisions of this chapter. Each enforcement officer shall account for and pay over, pursuant to law, all monies received by him under this chapter.

Such enforcement officers shall have the power, and it shall be their duty, to execute all warrants for violations of the rules and regulations of the commission and the provisions of this chapter; to serve subpoenas issued for the examination and investigation or trial of such violations; to board and examine, without warrant, any vessel required to be numbered under this chapter, to ascertain whether any of the provisions of this chapter or any rule or regulation of the commission has been or is being violated, and to use such force as may be necessary for the purpose of such examination and inspection; to arrest, without warrant, any person committing a violation of this chapter or the rules and regulations of the commission in the presence of the enforcement officers, and to take such person before a magistrate or court having jurisdiction for trial or hearing; and to exercise such other powers of peace officers in the enforcement of this chapter and the rules and regulations of the commission or of a judgment for the violation thereof, as are not herein specifically provided. No enforcement officers shall compromise or settle out of court any violation of the provisions of this chapter or any rule or regulation promulgated by the commission.

HISTORY: Codes, 1942, § 8496-23; Laws, 1960, ch. 165, § 23; Laws, 1964, ch. 468, § 9; Laws, 1968, ch. 265, § 4, eff from and after passage (approved July 4, 1968).

Cross References — Arrest generally, see §§ 99-3-1 et seq.

§ 59-21-129. Adoption of special rules and regulations.

(1) Any agency or political subdivision of this state may make application to the commission for special rules and regulations with reference to the operation, equipment or safety of vessels on any waters of this state within its territorial limits or authorized jurisdiction and shall set forth therein the reasons which make special rules or regulations necessary or appropriate. The commission is hereby authorized, after notice and a public hearing as provided in Section 59-21-117, to make special rules and regulations with reference to the operation, equipment or safety of vessels or motorboats on any waters of the state.

(2) The several counties and municipalities bordering the Mississippi Sound or the other coastal or tidal waters of this state are authorized and empowered to adopt ordinances setting out special rules and regulations with reference to the operation, equipment, or safety of vessels or motorboats on the Mississippi Sound or the other coastal or tidal waters of the state within their territorial limits, and shall set forth therein the reasons which make special rules and regulations necessary or appropriate. No ordinance shall conflict with the provisions of this chapter or with the regulations of any federal agency having jurisdiction over those waters. Notice shall be given of the proposed ordinance and a hearing shall be held thereon before the Commission on Marine Resources as provided in Section 59-21-117, and as a condition precedent, the Commission on Marine Resources shall recommend the adoption of the ordinance.

(3) It is the intent of this chapter that uniform regulations of general application to all the waters of this state shall be adopted and promulgated wherever practicable, and any special regulation or local ordinance, as authorized herein, shall be limited to the exigencies of local conditions which cannot be corrected by a regulation generally applicable to all the waters of the state.

HISTORY: Codes, 1942, § 8496-24; Laws, 1960, ch. 165, § 24; Laws, 1964, ch. 468, § 10; Laws, 1973, ch. 458, § 2; Laws, 1995, ch. 439, § 3, eff from and after July 1, 1995.

OPINIONS OF THE ATTORNEY GENERAL

A municipality may enact local ordinances governing waterways within its boundaries only pursuant to the procedure established in this Section. Whitmore, May 10, 1995, A.G. Op. #95-0148.

ENFORCEMENT; PENALTIES; ACTIONS

Sec.
59-21-151. Enforcement of chapter.
59-21-153. Penalties.
59-21-155. Disposition of fines and penalties.
59-21-157. Civil liability for violation of provisions of chapter.
59-21-159. Venue of actions based upon chapter.
59-21-161. Service of process on nonresidents.
59-21-163. Effect of Sections 59-21-157 through 59-21-161 on other causes of action.

§ 59-21-151. Enforcement of chapter.

All peace officers and other law enforcement officials are hereby authorized, empowered and enjoined to enforce the provisions of this chapter within their respective jurisdictions.

It shall be the duty of each district attorney in this state and each county prosecuting attorney in each county of this state to prosecute and defend, for the state, in all courts of the county or counties in his district or county, all causes, criminal or civil, arising under the provisions of this chapter or under any rule or regulation adopted and promulgated under this chapter, in which the state may be a party or may be interested or concerned.

HISTORY: Codes, 1942, § 8496-26; Laws, 1960, ch. 165, § 26; Laws, 1964, ch. 468, § 11, eff from and after June 15, 1964.

Cross References — Sheriffs and constables generally, see §§ 19-19-1 et seq., 19-25-1 et seq.

County attorneys, see §§ 19-23-1 et seq.

District attorneys, see §§ 25-31-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Under section 59-21-151, local law enforcement agencies can enforce existing state safety regulations involving watercraft such as storing the adequate number of personal flotation devices, overloading of individuals of a vessel, and improper equipment and/or invalid permits. Whitmore, May 10, 1995, A.G. Op. #95-0148.

§ 59-21-153. Penalties.

Any person who violates any provision of this chapter is guilty of a misdemeanor, and shall be subject to the following penalties:

(a) For a violation of any of the provisions of Sections 59-21-23(d), 59-21-29, 59-21-33, 59-21-55, 59-21-81 through 59-21-87, and 59-21-111 through 59-21-129, by a fine not to exceed Two Hundred Fifty Dollars ($250.00) or by imprisonment in the county jail not to exceed thirty (30) days, or both.

(b) For the violation of any provision of Section 59-21-31, by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not to exceed thirty (30) days, or both.

(c) For the violation of any other provision of this chapter, by a fine of not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Fifty Dollars ($250.00).

HISTORY: Codes, 1942, § 8496-26; Laws, 1960, ch. 165, § 26; Laws, 1964, ch. 468, § 11; Laws, 1988, ch. 327, eff from and after July 1, 1988.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Criminal liability for injury or death caused by operation of pleasure boat. 8 A.L.R.4th 886.

Liability of owner or operator of pleasure boat for injury or death of guest passenger. 35 A.L.R.4th 104.

§ 59-21-155. Disposition of fines and penalties.

All monies collected as fines or penalties for violation of the provisions of this chapter shall be paid over by the court, justice court judge, or other officer collecting or receiving the fines or penalties to the county having jurisdiction over the violation as provided by law.

HISTORY: Codes, 1942, § 8496-26; Laws, 1960, ch. 165, § 26; Laws, 1964, ch. 468, § 11; Laws, 1982, ch. 365, § 14; Laws, 1995, ch. 439, § 4, eff from and after July 1, 1995.

Cross References — Fisheries and wildlife fund, see § 49-5-21.

§ 59-21-157. Civil liability for violation of provisions of chapter.

The owner or operator of a vessel, or both, shall be civilly liable for any injury or damage proximately resulting from the negligent failure of such owner or operator to comply with any of the provisions of this chapter.

HISTORY: Codes, 1942, § 8496-27; Laws, 1960, ch. 165, § 27, eff from and after passage (approved April 14, 1960).

JUDICIAL DECISIONS

1. In general.

This statute is not retroactive, so as to be applicable where the cause of action accrued before its enactment. Hudgins v. Tug Kevin Moran, 206 F. Supp. 339, 1962 U.S. Dist. LEXIS 4700 (S.D. Miss. 1962).

RESEARCH REFERENCES

ALR.

Liability of owner or operator of motorboat for injury or damage. 63 A.L.R.2d 343.

Action for death caused by maritime tort within a state's territorial waters. 71 A.L.R.2d 1296.

Liability of owner or operator of pleasure boat for injury or death of guest passenger. 35 A.L.R.4th 104.

Am. Jur.

12 Am. Jur. 2d, Boats and Boating §§ 34 et seq.

7 Am. Jur. Trials 1, Motorboat Accident Litigation.

§ 59-21-159. Venue of actions based upon chapter.

The venue of any action based on this chapter may be in the county in which the vessel is usually moored, docked, housed or garaged, or in the county in which a vessel is involved in a boating accident, or in event of a boating accident taking place on a navigable waterway which is the boundary line of a county in either county so bounded, or in the county of the residence of the owner or operator of any such vessel.

HISTORY: Codes, 1942, § 8496-27; Laws, 1960, ch. 165, § 27, eff from and after passage (approved April 14, 1960).

§ 59-21-161. Service of process on nonresidents.

The acceptance by a nonresident of the right and privileges of operating a vessel or motorboat on any of the waters of this state, as evidenced by his operating, either in person or by agent or employee, a vessel or motorboat upon any of the navigable waters of this state, shall be deemed equivalent to an appointment by such nonresident of the secretary of state of the State of Mississippi to be his true and lawful attorney, upon whom may be served all lawful processes or summonses in any action or proceeding against him, growing out of a violation of the provisions of this chapter, or of any accident in which said nonresident may be involved while operating a vessel or motorboat on the navigable waters of the state. Such service of process may be had in the same manner as is provided by Section 13-3-63, for the service of process on nonresidents operating motor vehicles upon the highways of this state, and shall have the same effect.

HISTORY: Codes, 1942, § 8496-27; Laws, 1960, ch. 165, § 27, eff from and after passage (approved April 14, 1960).

Cross References — Service of process on nonresident motorist, see § 13-3-63.

§ 59-21-163. Effect of Sections 59-21-157 through 59-21-161 on other causes of action.

The provisions of Sections 59-21-157 through 59-21-161 shall not be construed to limit any cause of action heretofore maintainable at common law, maritime law or in admiralty, but shall be cumulative and supplemental thereto.

HISTORY: Codes, 1942, § 8496-27; Laws, 1960, ch. 165, § 27, eff from and after passage (approved April 14, 1960).

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. 2d, Boats and Boating §§ 34 et seq.

CHAPTER 23.

ALCOHOL BOATING SAFETY ACT

Sec.

59-23-1. Short title.
59-23-3. Definitions.
59-23-5. Consent to chemical or breath tests by persons operating watercraft; offer and administration of tests; advisement of effect of refusal to submit to test; advisement of persons arrested of rights; uniform citation form.
59-23-7. Offenses and penalties.

§ 59-23-1. Short title.

This chapter shall be known and may be cited as the "Alcohol Boating Safety Act."

HISTORY: Laws, 1995, ch. 620, § 1, eff from and after July 1, 1995.

§ 59-23-3. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings unless the context shall prescribe otherwise:

(a) "Chemical test" means an analysis of a person's blood, breath, urine or other bodily substance for the determination of the presence of alcohol or any other substance which may impair a person's mental or physical ability.

(b) "Intoxicated" means under the influence of alcohol or any combination of alcohol, controlled substance or drugs, so that there is impaired thought and action and loss of normal control of a person's faculties to such an extent as to endanger any person.

(c) "Law enforcement officer" means any officer described in Section 63-11-19 and includes a conservation officer employed by the Mississippi Department of Wildlife, Fisheries and Parks and a marine law enforcement officer employed by the Department of Marine Resources.

(d) "Prima facie evidence of intoxication" includes evidence that at the time of an alleged violation there was eight one-hundredths percent (.08%) or more by weight of alcohol in the person's blood.

(e) "Public waters" means all public waters over which the state has jurisdiction.

(f) "Watercraft" means a motorized vessel with a motor of twenty-five (25) horsepower or greater used for transportation on public waters and personal watercraft (jet skis).

(g) "Operates a watercraft" or "operation of a watercraft" shall mean a watercraft that is underway in the water.

HISTORY: Laws, 1995, ch. 620, § 2; Laws, 1996, ch. 406, § 1; Laws, 2010, ch. 370, § 1, eff from and after July 1, 2010.

JUDICIAL DECISIONS

1. Public waters.

Circuit court improperly ruled for a family in their action against the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) because it erroneously applied the legal standard for reckless disregard under the Mississippi Torts Claim Act; the river constituted a public Mississippi waterway, and the MDWFP possessed both the authority to regulate the boating traffic on the river and the discretion to do so in a safe manner. Miss. Dep't of Wildlife, Fisheries, & Parks v. Webb, 248 So. 3d 823, 2017 Miss. App. LEXIS 217 (Miss. Ct. App. 2017), rev'd, 248 So. 3d 772, 2018 Miss. LEXIS 127 (Miss. 2018).

§ 59-23-5. Consent to chemical or breath tests by persons operating watercraft; offer and administration of tests; advisement of effect of refusal to submit to test; advisement of persons arrested of rights; uniform citation form.

(1) A person who operates a watercraft in waters over which this state has jurisdiction shall be deemed to have given consent to submit to a chemical test or test of his breath for the purpose of determining the alcohol content of his blood, as a condition of operating the watercraft in this state.

(2) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person. A law enforcement officer may offer a person more than one (1) chemical test under this section. However, all tests must be administered within three (3) hours after the officer has probable cause to believe the person violated this chapter. If a person refuses to submit to a chemical test under this chapter, the person shall be informed by the law enforcement officer that the refusal to submit to the test shall subject him to arrest and punishment consistent with the penalties prescribed in Section 59-23-7 for persons submitting to the test, and that the court shall order the person not to operate a watercraft for at least one (1) year.

(3) If the chemical test results in prima facie evidence that the person is intoxicated, he shall immediately be arrested.

(4)(a) The law enforcement officer arresting a person pursuant to the provisions of this chapter shall inform the person arrested that:

(i) The person arrested has the right to be represented by legal counsel;

(ii) The person arrested may waive the right to be represented by legal counsel; and

(iii) The charge for which the person is being arrested may be used against him, upon conviction, for purposes of receiving an enhanced penalty as provided in Section 59-23-7.

(b) The citation or affidavit which is issued to the person arrested shall be uniform throughout all jurisdictions in the State of Mississippi and shall contain a place for the arresting official to sign, stating that he has advised the person arrested of the information contained in paragraph (a) of this subsection. The judge hearing the case or accepting the guilty plea, as the case may be, shall sign in a place provided on the citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been advised pursuant to paragraph (a) of this subsection. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the citation or affidavit.

(c) The Mississippi Department of Wildlife, Fisheries and Parks shall prepare and furnish, no later than July 1, 1995, to all jurisdictions in the State of Mississippi a uniform citation form consistent with this chapter, which shall be used in all jurisdictions in the State of Mississippi.

(d) The Mississippi Department of Wildlife, Fisheries and Parks shall notify, by whatever means it deems appropriate, all law enforcement officers who are authorized to enforce the provisions of this chapter of their obligation to provide the information and execute the citation or affidavit, as described in paragraphs (a) and (b) of this subsection.

HISTORY: Laws, 1995, ch. 620, § 3; Laws, 2010, ch. 370, § 2, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.

Validity, Construction, and Application of Statutes Prohibiting Boating While Intoxicated, Boating While under the Influence, or the Like. 47 A.L.R.6th 107.

§ 59-23-7. Offenses and penalties.

(1) It is unlawful for any person to operate a watercraft on the public waters of this state who:

(a) Is under the influence of intoxicating liquor;

(b) Is under the influence of any other substance which has impaired such person's ability to operate a watercraft; or

(c) Has eight one-hundredths percent (.08%) or more by weight volume of alcohol in the person's blood based upon milligrams of alcohol per one hundred (100) cubic centimeters of blood as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter.

(2)(a) Upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 59-23-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned for not more than twenty-four (24) hours in jail, or both; and the court shall order such person to attend and complete a boating safety education course developed by the Department of Wildlife, Fisheries and Parks.

(b) Upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Dollars ($1,000.00) and shall be imprisoned not less than forty-eight (48) consecutive hours nor more than one (1) year or sentenced to community service work for not less than ten (10) days nor more than one (1) year. The court shall order the person not to operate a watercraft for one (1) year.

(c) For any third conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Eight Hundred Dollars ($800.00) nor more than One Thousand Dollars ($1,000.00) and shall be imprisoned not less than thirty (30) days nor more than one (1) year. The court shall order the person not to operate a watercraft for two (2) years.

(d) Any fourth or subsequent violation of subsection (1) of this section shall be a felony offense and, upon conviction, the offenses being committed within a period of five (5) years, the person shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00) and shall be imprisoned not less than ninety (90) days nor more than five (5) years in the custody of the Department of Corrections. The court shall order the person not to operate a watercraft for three (3) years.

(3) Any person convicted of operating any watercraft in violation of subsection (1) of this section where the person (a) refused a law enforcement officer's request to submit to a chemical test, or (b) was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall be punished consistent with the penalties prescribed herein for persons submitting to the test and the court shall order the person not to operate a watercraft for the time periods specified in subsection (2) of this section.

(4) Any person who operates any watercraft in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other member or limb of another shall, upon conviction, be guilty of a felony and shall be committed to the custody of the Department of Corrections for a period of time not to exceed ten (10) years.

(5) Upon conviction of any violation of subsection (1) of this section, the judge shall cause a copy of the citation and any other pertinent documents concerning the conviction to be sent immediately to the Mississippi Department of Wildlife, Fisheries and Parks and the Department of Marine Resources. A copy of the citation or other pertinent documents, having been attested as true and correct by the Director of the Mississippi Department of Wildlife, Fisheries and Parks, or his designee, or the Director of the Department of Marine Resources, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(6) The provisions of this section are fully applicable to any person who is under the influence of medical cannabis that is lawful under the Mississippi

Medical Cannabis Act and in compliance with rules and regulations adopted thereunder which has impaired the person's ability to operate a watercraft.

HISTORY: Laws, 1995, ch. 620, § 4; Laws, 2010, ch. 370, § 3, eff from and after July 1, 2010; Laws, 2022, ch. 303, § 65, eff from and after passage (approved February 2, 2022).

Amendment Notes — The 2022 amendment, effective February 2, 2022, added (6).

Cross References — Mississippi Medical Cannabis Act, see §§ 41-137-1 et seq.

JUDICIAL DECISIONS

1. Evidence sufficient.

Defendant's conviction for boating under the influence was not against the overwhelming weight of the evidence because defendant's breath-alcohol test showed that his blood-alcohol level was 0.110 – above the 0.08 limit; witness testimony reflected that defendant was drinking beer and taking shots consisting of gelatin mixed with vodka and chilled in small cups prior to the accident; and law-enforcement officers at the scene following the accident observed defendant slurring his speech and noted a strong smell of an intoxicating beverage on defendant's breath. Austin v. State, 176 So. 3d 119, 2015 Miss. App. LEXIS 505 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

ALR.

Validity, Construction, and Application of Statutes Prohibiting Boating While Intoxicated, Boating While under the Influence, or the Like. 47 A.L.R.6th 107.

CHAPTER 25.

CERTIFICATES OF TITLE FOR BOATS AND OTHER VESSELS

Sec.

59-25-1. Definitions.
59-25-3. Application for certificate of title; application requirements; contents of certificate of title.
59-25-5. Issuances of certificate of title; procedures and fees.
59-25-7. Certificate of origin; records of sale, purchase, or exchange of vessel.
59-25-9. Hull identification numbers; motor serial numbers.
59-25-11. Transfer of title by operation of law.
59-25-13. Certificate of title showing security interest.
59-25-15. Certificate of number prima facie evidence of ownership.
59-25-17. Authority of department to adopt rules and regulations, prescribe forms, and carry out investigations.

§ 59-25-1. Definitions.

The following words, as used in this chapter, shall have the following meanings:

(a) "Certificate of origin" means the document provided by the manufacturer of a new vessel, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised new vessel dealers and the original purchaser.

(b) "Dealer" means any person engaged wholly or in part in the business of selling or offering for sale, buying or taking in trade for the purpose of resale, or exchanging, displaying, demonstrating or offering for sale vessels or motors, and who receive or expect to receive money, profit or any other thing of value.

(c) "Department" means the Department of Wildlife, Fisheries and Parks.

(d) "Documented vessel" means a vessel documented under 46 U.S.C.S., Chapter 121.

(e) "Lienholder" means a person holding a security interest.

(f) "Manufacturer" means any person engaged in the manufacture, construction or assembly of vessels, or their importation into the United States, for the purpose of sale or trade.

(g) "Motor" means any type of outboard device providing motorized propulsion for vessels operated by any type fuel.

(h) "Operate" means to navigate or otherwise use a vessel.

(i) "Owner" means a person, other than a lienholder, having the property in or title to a vessel or motor. The term includes a person entitled to the use or possession of a vessel or motor subject to an interest in another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(j) "Person" means an individual, firm, partnership, corporation, company, association, joint-stock association or governmental entity and includes a trustee, receiver, assignee or similar representative of any of them.

(k) "Security interest" means an interest which is reserved or created by an agreement which secures payment or performance of an obligation and is valid against third parties generally.

(*l*) "State of principal operation" means the state on whose waters a vessel is used or to be used most during a calendar year.

(m) "Titling authority" means a state whose vessel titling system has been certified by the Coast Guard as complying with the guidelines for state vessel titling systems listed in 33 CFR, Part 187.

(n) "Use" means to operate, navigate or employ a vessel. A vessel is in use whenever it is upon the water.

(o) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, that is required to be numbered in accordance with the Mississippi Boating Law, Chapter 21 of Title 59, Mississippi Code of 1972.

HISTORY: Laws, 1997, ch. 393, § 1; Laws, 1998, ch. 362, § 1, eff from and after passage (approved March 16, 1998).

§ 59-25-3. Application for certificate of title; application requirements; contents of certificate of title.

(1) Any owner of a vessel principally operated on the waters of the state and required to be numbered may apply to the department for a certificate of title for the vessel or the motor.

(2)(a) The application shall contain the name and mailing address of the owner, and the names and addresses of all persons having any liens or encumbrances upon the vessel or motor in the order of their priority. The application shall contain the signatures of all owners certifying that statements made are true and correct to the best of the applicant's knowledge, information and belief, under penalty of perjury.

(b) Every application for a certificate of title shall contain a description of the vessel or motor to be titled, including the state certificate of number (if previously assigned), hull length, type and principal material of construction, model year, the date of purchase, hull identification number, manufacturer, horse power, serial number and the name and address of the person from whom the vessel or motor was purchased. The application shall contain the date of sale and gross purchase price of the vessel or motor, or the fair market value if no sale immediately preceded the transfer and any additional information the department requires. If the application is made for a vessel or motor previously registered or titled in another state or foreign country, it shall contain this information. The application shall be on forms prescribed and furnished by the department and shall contain any other information required by the department.

(3) If a dealer buys or acquires a used numbered vessel or motor for resale, he shall report the acquisition to the department on forms the department

provides, or he may apply for and obtain a certificate of title as provided in this chapter. If a dealer acquires a new vessel or motor requiring titling for resale, he may apply for and obtain a certificate of title as provided in this chapter.

Every dealer transferring a vessel or motor requiring titling, as determined by the department, shall assign the title to the new owner, or in the case of a new vessel or motor assign either the certificate of origin or, if titled, the title.

(4) No person may sell, assign or transfer a vessel or motor titled by the department without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee's name. No person may purchase or otherwise acquire a vessel or motor titled by the department without obtaining a certificate of title for it in his name.

(5) Every certificate of title shall contain the owner's name; the address of the principal place of residence of an individual owner and the address of the principal place of business of an owner that is not an individual, including zip code; date of title issuance; vessel or motor description, including the vessel or motor identification number as described in 33 CFR 187.05, name of manufacturer or model, year built or the model year, vessel length, vessel type, drive or propulsion type, motor horsepower, vessel use, hull material and fuel type; each lienholder's name and address; recording or perfection date of new liens and original recording date of any liens outstanding; and other items as required by the department. Space must also be provided for assignment of interest, with a certification that statements provided on the title assignment are true and correct to the best of the owner's knowledge, under penalty of perjury.

(6) The department shall retain the evidence used to establish the accuracy of the information required for titling purposes, and shall maintain a record of any certificate of title it issues.

HISTORY: Laws, 1997, ch. 393, § 2, eff from and after July 1, 1998.

OPINIONS OF THE ATTORNEY GENERAL

The definition of "public record" contained in the statute applies to the records of agencies or appointed or elected officials which records were created prior to July 1, 1981. Hilliard, December 11, 1998, A.G. Op. #98-0641.

The definition of "public record" contained in the statute applies to records that were created prior to July 1, 1981, and that were retained outside of agency custody by an appointed or elected official or state government employee after the expiration of his term of service. Hilliard, December 11, 1998, A.G. Op. #98-0641.

§ 59-25-5. Issuances of certificate of title; procedures and fees.

(1) The department may charge a fee not to exceed Ten Dollars ($10.00) to issue a certificate of title; a transfer of title or a duplicate or corrected certificate of title.

(2) The holder of an original title shall apply for a duplicate title within thirty (30) days after, or after the discovery of, the loss, theft, mutilation or

destruction of an original certificate of title. The department shall issue a duplicate certificate of title plainly marked "duplicate" across its face upon application by the person entitled to hold the certificate if the department is satisfied that the original certificate has been lost, stolen, mutilated, destroyed or has become illegible. The applicant shall furnish information concerning the original certificate and the circumstances of its loss, theft, mutilation or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate. If a duplicate certificate of title has been issued and the lost or stolen original is recovered, the original shall be promptly surrendered to the department for cancellation.

HISTORY: Laws, 1997, ch. 393, § 3, eff from and after July 1, 1998.

§ 59-25-7. Certificate of origin; records of sale, purchase, or exchange of vessel.

(1) No dealer shall purchase or acquire a new vessel or motor without obtaining from the seller a manufacturer's or importer's certificate of origin. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vessel or motor to a dealer for purposes of resale without delivering to the dealer a manufacturer's or importer's certificate of origin.

(2) The manufacturer's or importer's certificate of origin shall be a uniform or standardized form prescribed by the department and shall contain: a description of the vessel or motor including its trade name, model year, length, type and hull identification number; an assignment form, including the certification of date of transfer of vessel or motor, the name and address of transferee; certification that the vessel or motor is new, and a warranty that the vessel or motor at the time of delivery is subject only to such liens and encumbrances as set forth and described in full in the assignment.

(3) Every dealer shall maintain for at least three (3) years a record of any vessel or motor bought, sold, exchanged or received for sale or exchange. This record shall be available for inspection by department representatives during reasonable business hours.

HISTORY: Laws, 1997, ch. 393, § 4, eff from and after July 1, 1998.

§ 59-25-9. Hull identification numbers; motor serial numbers.

(1) Every vessel shall have a hull identification number assigned and affixed. The department shall assign a hull identification number to an undocumented vessel not having a hull identification number at the time of numbering or applying for a certificate of title after transfer of ownership or change of state of principal operation. Every motor shall have a motor serial number affixed.

(2) A person may not destroy, remove, alter, cover or deface the manufacturer's hull identification number or motor serial number, the plate bearing it or any hull identification number or motor serial number the department assigns to any vessel or motor, without authorization from the department.

HISTORY: Laws, 1997, ch. 393, § 5, eff from and after July 1, 1998.

§ 59-25-11. Transfer of title by operation of law.

(1) In the event of a transfer by operation of law of the title or interest of an owner in a vessel or motor titled under this chapter, the transferee or his legal representative shall apply to the department for a certificate of title within thirty (30) days of the transfer. The application shall be accompanied by the title or other states registration previously issued for the vessel or motor, if available, together with any instruments or documents of authority, or certified copies thereof, satisfactory to the department as proof of ownership and the required fee.

(2) For purposes of this chapter, transfer by operation of law shall include transfers to anyone as legatee or distributee or as surviving joint owner or by an order in bankruptcy or insolvency, execution sale, repossession upon default in the performing of the terms of a lease or executory sales contract, or transfers pursuant to any written agreement ratified or incorporated in a decree or order of a court of record, or otherwise than by the voluntary act of the person whose title or interest is so transferred.

(3) If the holder of a certificate of title is deceased and there has been no qualification on his estate, a transfer may be made by a legatee or distributee. The legatee or distributee presents to the department the original certificate of title and a statement made to the effect that there has not been or expected to be a qualification on the estate and that the decedent's debts have been paid or that the proceeds from the sale of the vessel or motor will be applied against his debts. The statement shall contain the name, residence at the time of death, date of death of the decedent, and the names of any other persons having an interest in the vessel or motor for which the title is to be transferred. If these persons are of legal age, they shall indicate in writing their consent to the transfer of the title.

HISTORY: Laws, 1997, ch. 393, § 6, eff from and after July 1, 1998.

§ 59-25-13. Certificate of title showing security interest.

(1) The department, upon receiving an application for a certificate of title to a vessel or motor showing security interest on the vessel or motor, shall show upon the face of the certificate of title all security interest in the order of their priority as shown on the application. When a security interest exists, the application for a certificate of title must also contain the name and address of the secured party and the date and amount of the security interest.

(2) Security interest created after the original issue of title to the owner must be shown on the certificate of title. The owner shall surrender the original certificate of title to the department and file an application with the department containing the name and address of the secured party, the amount of the security interest, the date and payment of a filing fee. The department shall then issue a new certificate of title showing name and address of the secured party. The newly issued certificate of title shall be sent to the secured party.

For the purpose of recording a subsequent security interest, the department shall require any secured party to deliver the certificate of title to the department. Upon receipt of the certificate of title, completion of the forms and required fees, the department shall then issue a new certificate of title showing the security interest in the order of their priority according to the date of the filing of the application. The newly issued certificate of title shall be sent to the first secured party listed on the certificate of title.

(3) The certificate of title when issued by the department showing a security interest shall be adequate notice to the state, creditors and purchasers that a security interest exists. The recording or filing of the security interest in the county or city where the purchaser or debtor resides shall not be required.

(4) If application for the recordation of a security interest is filed in the principal office of the department within five (5) days from the date of the applicant's purchase of the vessel or motor, it shall be valid to all persons as if the recordation had been done on the day the security interest was acquired.

(5) The security interest, except security interest in inventory held for sale, shown on the certificates of title issued by the department pursuant to applications for certificates shall have priority over any other liens or security interest however created and recorded, except for liens designated by the department.

(6) The certificate of title shall be delivered to the person holding the security interest having first priority. The title shall be retained by that lienholder until the entire amount of the security interest is fully paid by the owner. The certificate of title shall then be delivered to the secured party next in order of priority and so on, or, if none, then to the owner.

(7) Upon the satisfaction of a security interest, the secured party shall attach to the certificate of title a release of security interest or in whatever form as may be prescribed by the department. Within five (5) days the secured party shall mail or deliver the certificate of title to the owner and a copy of the security release, if required by the department. Upon request of the owner and upon receipt of a copy of the security release, if required, and the certificate of title, the department shall correct its records and issue a new certificate of title to the owner.

(8) It shall constitute a misdemeanor for a secured party who holds a security interest as provided for in this chapter to refuse or fail to surrender the certificate of title to the person to whom it is legally entitled within five (5) days after the security interest has been paid and satisfied. The misdemeanor is punishable as provided in Section 59-21-153(a).

(9) This section does not apply to any of the following: a lien given by statute or rule of law to a supplier of services or materials for the vessel or motor; a lien given by statute to the United States, a state or a political subdivision thereof; or any lien arising out of an attachment of a vessel or motor.

HISTORY: Laws, 1997, ch. 393, § 7, eff from and after July 1, 1998.

§ 59-25-15. Certificate of number prima facie evidence of ownership.

Issuance of a certificate of number shall be prima facie evidence of ownership of a vessel and entitles a person to a certificate of title, but certificate of number and certificate of title shall be subject to rebuttal.

HISTORY: Laws, 1997, ch. 393, § 8, eff from and after July 1, 1998.

§ 59-25-17. Authority of department to adopt rules and regulations, prescribe forms, and carry out investigations.

(1) The department shall adopt the necessary rules and regulations to implement this chapter.

(2) The department shall prescribe and provide suitable forms of applications, certificates of title, notices of security interests and all other notices and forms necessary to carry out this chapter.

(3) The department may make necessary investigations to procure information required to carry out this chapter.

HISTORY: Laws, 1997, ch. 393, § 9, eff from and after July 1, 1998.

TITLE 61.

AVIATION

Chapter 1. Transportation Commission. 61-1-1
Chapter 3. Airport Authorities. 61-3-1
Chapter 4. Mississippi Wayport Authority Act [Repealed]. .. 61-4-1
Chapter 5. Acquisition, Disposition and Support of Airport Facilities. 61-5-1
Chapter 7. Airport Zoning. 61-7-1
Chapter 9. Incorporation of Airport Into Corporate Boundaries of Municipality. 61-9-1
Chapter 11. Operation of Aircraft; Certification and Licensing of Pilots and Aircraft. 61-11-1
Chapter 13. Aircraft for Use of Governor, State Departments and Agencies. 61-13-1
Chapter 15. Registration of Aircraft. 61-15-1
Chapter 17. Concealing or Misrepresenting Aircraft Identification Number; Non-Conforming Aircraft Fuel Containers. 61-17-1
Chapter 19. Aviation Hazards. 61-19-1

CHAPTER 1.

TRANSPORTATION COMMISSION

Sec.
61-1-1. Purpose of chapter.
61-1-3. Definitions.
61-1-5. Repealed.
61-1-7 through 61-1-11. Repealed.
61-1-13. General powers and duties of commission.
61-1-15. Rules, regulations, standards, orders and procedures.
61-1-17. Cooperation with federal government.
61-1-19. Acceptance of federal funds and other donations.
61-1-21. Contracts of commission.
61-1-23. Deposit and disbursement of funds.
61-1-25 through 61-1-29. Repealed.
61-1-31. Licensing of airports.
61-1-33. Approval of municipal projects.
61-1-35. Conduct of investigations, inquiries and hearings.
61-1-37. Use and limitations on reports of investigations and hearings.
61-1-39. Federal-state joint hearings; cooperation between governments; accident reporting.
61-1-41. Use of state and municipal facilities and services.
61-1-43. Enforcement of chapter and rules and regulations.
61-1-45. Commission orders.
61-1-47. Penalties for violations of chapter and rules and regulations.
61-1-49. Exchange of information as to violations.

§ 61-1-1. Purpose of chapter.

It is hereby declared that the purpose of this chapter is to further the public interest and aeronautical progress by providing for the protection, promotion and development of aeronautics; by cooperating in effecting a uniformity of the laws relating to the development of aeronautics in the several states; by revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within the state, that the state may assist in the promotion of a statewide system of airports, and that the state may cooperate with and assist the political subdivisions of this state in order that those engaged in aeronautics of every character may so engage with the least possible restriction consistent with the safety and the rights of other persons; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for the coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of the federal agencies.

HISTORY: Codes, 1942, § 7536-01; Laws, 1946, ch. 417, § 1; Laws, 1948, ch. 189, § 1, eff from and after July 1, 1948.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability for personal injuries.

1. In general.

No federal statute or constitutional provision and no state constitutional provision, is contravened by this statute. Hays v. Morgan, 221 F.2d 481, 1955 U.S. App. LEXIS 3533 (5th Cir. Miss. 1955).

2. Liability for personal injuries.

In an action to recover for personal injuries sustained by the plaintiff when he was struck by an airplane used to spray cotton on a farm, owners of the airplane were liable, where they reserved the right to direct when and how the work of spraying cotton was to be carried on, and where there was no lease of any kind of airplane to pilot and where the bailment was at the will of the owners. Hays v. Morgan, 221 F.2d 481, 1955 U.S. App. LEXIS 3533 (5th Cir. Miss. 1955).

RESEARCH REFERENCES

ALR.

Liability of United States, under Federal Tort Claims Act (28 U.S.C.S. §§ 1346(b), 2671 et seq.) or Suits in Admiralty Act (46 App. U.S.C.S. §§ 741 et seq.), for injuries or damages arising from issuance, preparation, or distribution of charts, maps, or like navigational aids. 164 A.L.R. Fed. 541.

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 1 et seq.

Practice References.

Aviation Accident Law (Matthew Bender).

§ 61-1-3. Definitions.

For the purpose of the laws of this state relating to aeronautics the following words, terms and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(a) "Aeronautics" means transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories; the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or other air navigation facilities, including, but not limited to, privately-owned airports that are open to the general public and are otherwise eligible to receive federal funds; and air instruction;

(b) "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air;

(c) "Public aircraft" means an aircraft exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory or possession of the United States or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes;

(d) "Civil aircraft" means any aircraft other than a public aircraft;

(e) "Airport" means any area of land or water which is designed for the landing and take off of aircraft, whether or not facilities are provided for the shelter, servicing or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way, whether heretofore or hereafter established;

(f) "Commission" means the Mississippi Transportation Commission;

(g) "State" or "this state" means the State of Mississippi;

(h) "Director" means the Executive Director of the Mississippi Department of Transportation or his designee.

(i) "Air navigation" means the operation or navigation of aircraft in the air space over this state, or upon any airport within this state;

(j) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state;

(k) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof;

(*l*) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of the United States;

(m) "Municipality" means any county, incorporated city, village or town of this state and any other political subdivision or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve and operate airports and other air navigation facilities;

(n) The Mississippi Aeronautics Chart, published annually, will identify "private airport," and if an airport is open to the public, as determined by the owner, the chart will note "open to the public" under the airport identifier.

The singular shall include the plural, and the plural the singular.

HISTORY: Codes, 1942, § 7536-26; Laws, 1946, ch. 417, § 8; Laws, 1948, ch. 189, § 21; Laws, 1989, ch. 544, § 52; Laws, 1992, ch. 496, § 27; Laws, 2001, ch. 564, § 1, eff from and after July 1, 2001.

Cross References — Apportionment of tax on aviation fuels and oils for support and development of aeronautics as defined in this section, see § 27-5-101.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Relationship to other laws.
3. Compensation for taking of property.
4. Liability for damages.

1. In general.

No federal statute or constitutional provision and no state constitutional provision, is contravened by this statute. Hays v. Morgan, 221 F.2d 481, 1955 U.S. App. LEXIS 3533 (5th Cir. Miss. 1955).

2. Relationship to other laws.

Where the use of the air space above the plaintiffs' land by aircraft approaching and taking off from a municipal airport amounted to a taking for which the plaintiffs were entitled to compensation, they were not limited to recovery against the United States on the theory that federal legislation had placed navigable air spaces in the public domain and had preempted the field. Jackson Municipal Airport Authority v. Wright, 232 So. 2d 709, 1970 Miss. LEXIS 1637 (Miss. 1970).

3. Compensation for taking of property.

Although a municipal airport had informally, without resorting to eminent domain or other legal process, acquired an overflight easement in the air space above the plaintiffs' land there had been an actual taking for public use of private property for which the owners were entitled to compensation, where low overflights of great numbers of aircraft habitually and constantly invaded the air space and substantially impaired the plaintiff's use and enjoyment of their property, the owners were entitled to compensation. Jackson Municipal Airport Authority v. Wright, 232 So. 2d 709, 1970 Miss. LEXIS 1637 (Miss. 1970).

4. Liability for damages.

Owner of an aircraft was not held vicariously liable for the negligence of a nonemployee pilot who borrowed the aircraft for the benefit of his personal friends. Malone v. Capital Corr. Res., Inc., 2001 Miss. LEXIS 203 (Miss. Aug. 23, 2001), op. withdrawn, sub. op., 808 So. 2d 963, 2002 Miss. LEXIS 49 (Miss. 2002).

In an action to recover for personal injuries sustained by the plaintiff when he was struck by an airplane used to spray cotton on a farm, owners of the airplane were liable, where they reserved the right to direct when and how the work of spraying cotton was to be carried on, and where there was no lease of any kind of airplane to pilot and where the bailment was at the will of the owners. Hays v. Morgan, 221 F.2d 481, 1955 U.S. App. LEXIS 3533 (5th Cir. Miss. 1955).

The employer of one hiring the pilot of an airplane to transport him in the course of his employment is liable in damages for the stampeding of cattle by a takeoff, by the employee's direction, from the pasture in which the plane had landed. Brunt v. Chicago Mill & Lumber Co., 243 Miss. 607, 139 So. 2d 380, 1962 Miss. LEXIS 384 (Miss. 1962).

Trial court properly granted a limited liability company (LLC) summary judgment in wrongful death beneficiaries' action because the LLC could act only through a pilot since he was its sole member, and the beneficiaries were barred from recovering for the pilot's negligence; if the pilot had survived the crash, he would have been unable to recover from the LLC for his own negligence, and the beneficiaries stood in the pilot's shoes and also could not recover for his negligence. Howarth v. M&H Ventures, LLC, 237 So. 3d 107, 2017 Miss. LEXIS 429 (Miss. 2017).

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation § 1.

CJS.

2A C.J.S., Aeronautics and Aerospace §§ 3 et seq.

Practice References.

Aviation Accident Law (Matthew Bender).

§ 61-1-5. Repealed.

Repealed by Laws, 1992, ch. 496, § 36, eff from and after July 1, 1992.

§ 61-1-5. [Codes, 1942, § 7536-02; Laws, 1946, ch. 417, § 2; Laws, 1948, ch. 189, § 2; Laws, 1958, ch. 462; Laws, 1989, ch. 544, § 51, eff from and after July 1, 1989]

Editor's Notes — Former § 61-1-5 transferred all the functions of the Mississippi

Aeronautics Commission to the Mississippi Department of Economic and Community Development.

§§ 61-1-7 through 61-1-11. Repealed.

Repealed by Laws, 1989, ch. 544, § 53, eff from and after July 1, 1989.

§ 61-1-7. [Codes, 1942, § 7536-03; Laws, 1946, ch. 417, § 3; Laws, 1948, ch. 189, § 3; Laws, 1970, ch. 424, § 1]

§ 61-1-9. [Codes, 1942, §§ 7536-03, 7536-04; Laws, 1946, ch. 417, §§ 3, 4; Laws, 1948, ch. 189, §§ 3, 4; Laws, 1970, ch. 424, § 1]

§ 61-1-11. [Codes, 1942, § 7536-05; Laws, 1946, ch. 417, § 5; Laws, 1948, ch. 189, § 5]

Editor's Notes — Former § 61-1-7 specified the organization of the Aeronautics Commission, its offices, and reports required of the commission.

Former § 61-1-9 provided for meetings of the Aeronautics Commission, the employment of a director and other employees, and for office space for the commission.

Former § 61-1-11 specified the powers and duties of the director of aeronautics.

OPINIONS OF THE ATTORNEY GENERAL

Transportation Commissioners' requests for reimbursement of expenses should be placed on the Commission's agenda, setting forth the itemized amount to reimburse to each Commissioner, as an agenda item to be voted on by the Commission. The results of said vote should be reflected in the minutes for each meeting. Brown, Mar. 19, 2004, A.G. Op. 04-0073.

§ 61-1-13. General powers and duties of commission.

(1) The commission is empowered and directed to encourage, foster and assist in the development of aeronautics in this state, and to encourage the establishment of airports and other air navigation facilities.

(2) The commission may recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(3) The commission may render financial assistance in the acquisition, development, operation or maintenance of airports out of any monies made available by the Legislature for that purpose. In addition, the commission may render financial assistance for the purpose of providing air-marking and to aid in the establishment, development and maintenance of the Civil Air Patrol Program in Mississippi and the program of other local worthy organizations which tend to promote aeronautics in the state, as the commission, in its discretion, shall deem advisable, out of any funds appropriated by the Legislature for the operation of the commission. All such funds so expended by the commission during each calendar year for such purposes shall be reported to the Governor in the commission's annual report to the Governor as provided in this chapter.

(4) The commission is authorized to buy, own, operate, maintain, lease, charter or rent an aircraft for the use of the commission, and for carrying on

the business of the commission only, out of any monies appropriated by the Legislature for the operation and maintenance of the commission.

The commission is further authorized, in its discretion, to obtain and pay the premium on all risk, ground and flight coverage for physical loss or damage coverage upon any aircraft owned by or under the control of the commission.

(5) The commission is authorized to affiliate itself with the National Association of State Aviation Officials and to pay such reasonable fees and dues for membership and services as may be required.

(6) The commission may enter into any contract necessary to the execution of the powers granted it by this chapter but shall have no authority to enter into any contract or agreement binding the State of Mississippi for the payment of any monies which have not been specifically authorized by the Legislature, nor shall it enter into any contract or agreement binding the State of Mississippi, in excess of the powers granted in this chapter.

(7) The commission shall conduct hearings and shall make investigation as it may deem necessary for the purposes of determining the location, type of construction and the cost to the State of Mississippi of maintenance of emergency and all other classes of airports owned, operated or directly financed in whole or in part by the state within the State of Mississippi. It shall render assistance within its power, not inconsistent with this chapter, to any such subdivisions of the state in procuring such aid as the federal government may grant for the purpose of establishing and maintaining airports.

(8) The commission is hereby given full power and authority to grant permits or franchises to any airline operating wholly intrastate and within the bounds of the State of Mississippi, when proper proof is shown to the commission that the applicant therefor is fit, willing, ready and able to operate said airline under said permit or franchise. The commission is hereby authorized to designate, promulgate and initiate all and any rules, regulations, franchises and directives establishing air lanes governing intrastate air routes for the purpose of commercial scheduled intrastate flights by any person, firm or establishment engaging in the business of commercial intrastate air transportation. All such designated air routes shall conform to the standards prescribed by the federal government and its related agencies.

However, nothing contained in this subsection shall in any way apply to an air carrier operating by authority of a certificate or certificates of public convenience and necessity issued by the Civil Aeronautics Board or any other federal agency authorized to issue such certificates.

HISTORY: Codes, 1942, § 7536-06; Laws, 1946, ch. 417, § 6; Laws, 1948, ch. 189, § 6; Laws, 1962, ch. 501; Laws, 1984, ch. 495, § 28; reenacted and amended, Laws, 1985, ch. 474, § 19; Laws, 1986, ch. 438, § 41; Laws, 1987, ch. 483, § 42; Laws, 1988, ch. 442, § 39; Laws, 1989, ch. 537, § 37; Laws, 1990, ch. 518, § 38; Laws, 1991, ch. 618, § 38; Laws, 1992, ch. 491, § 40, eff from and after passage (approved May 12, 1992).

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by Department of Finance and Administration, see § 11-

46-17.

Duty of the state tax commission to furnish information concerning registration of aircraft, see § 61-15-9.

Cooperation with the board of agricultural aviation, see § 69-21-109.

Formation of insurance companies for purpose of insuring aircraft, see § 83-19-1.

RESEARCH REFERENCES

ALR.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort. 68 A.L.R.2d 1437.

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 26 et seq.

CJS.

2A C.J.S., Aeronautics and Aerospace §§ 14, 26-34.

§ 61-1-15. Rules, regulations, standards, orders and procedures.

(1) **Power to issue.** The commission may perform such acts, issue and amend such orders, make, promulgate, and amend such reasonable general or special rules, regulations and procedures, and establish such minimum standards consistent with the provisions of this chapter, as it shall deem necessary to carry out the provisions of this chapter and to perform its duties hereunder, all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using or traveling in aircraft or persons receiving instruction in flying or ground subjects pertaining to aeronautics, and the safety of persons and property on land or water, and developing and promoting aeronautics in this state. No rule or regulation of the commission shall apply to airports or air navigation facilities owned or operated by the United States.

(2) **Conformity to federal legislation and rules.** No rules, regulations, orders or standards prescribed by the commission shall be inconsistent with, or contrary to, any act of the congress of the United States or any regulations promulgated or standards established pursuant thereto.

(3) **Filing.** The commission shall keep on file with the secretary of state, and at the principal office of the commission, a copy of all its rules and regulations for public inspection.

(4) **Distribution.** The commission shall provide for the publication and general distribution of all its orders, rules, regulations and procedures having general effect.

HISTORY: Codes, 1942, § 7536-11; Laws, 1948, ch. 189, § 8, eff from and after July 1, 1948.

RESEARCH REFERENCES

ALR.

Aircraft operated wholly within state as subject to Federal regulation. 9 A.L.R.2d 485.

Liability of owner or operator of airport in connection with furnishing rescue equipment or services. 34 A.L.R.3d 1449.

Liability for injury to guest in airplane. 40 A.L.R.3d 1117.

Strict liability, in absence of statute, for injury or damage occurring on the ground caused by ascent, descent, or flight of aircraft. 73 A.L.R.4th 416.

Am. Jur.

4 Am. Jur. Pl & Pr Forms (Rev), Aviation, Form 272.1 (complaint arising out of crash of aircraft into residence during storm).

§ 61-1-17. Cooperation with federal government.

The commission is authorized to cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state, and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal monies upon such airports and other air navigation facilities.

HISTORY: Codes, 1942, § 7536-07; Laws, 1946, ch. 417, § 7(1); Laws, 1948, ch. 189, § 7(1), eff from and after July 1, 1948.

§ 61-1-19. Acceptance of federal funds and other donations.

The commission is authorized to accept, receive, and receipt for federal monies and other monies, either public or private, for and in behalf of this state, or any municipality thereof, when authorized by the municipality to do so, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state or by such municipalities or any other political subdivision of the State of Mississippi aided by grants of aid for the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder. The commission is authorized to act as agent of any municipality or other person or persons in accepting, receiving, and receipting for such monies in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal monies. The governing body of any such municipality or other person or persons is authorized to designate the commission as its agent for such purposes and to enter into an agreement with it prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and with this chapter. Such monies as are paid over by the United States government shall be retained by the state or paid over to said municipalities or other person or persons under such terms and conditions as may be imposed by the United States government in making such grants.

HISTORY: Codes, 1942, § 7536-08; Laws, 1946, ch. 417, § 7(2); Laws, 1948, ch. 189, § 7(2), eff from and after July 1, 1948.

Cross References — Municipal airport law, see §§ 61-5-1 et seq.

§ 61-1-21. Contracts of commission.

All contracts for the acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the commission, either as the agent of this state or as the agent of any municipality or other person or persons, shall be made pursuant to the laws of this state governing the making of like contracts. However, where the acquisition, construction, improvement, maintenance, and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal money, the commission, as agent of the state or any municipality or other person or persons thereof, may let contracts in the same manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

HISTORY: Codes, 1942, § 7536-09; Laws, 1946, ch. 417, § 7(3); Laws, 1948, ch. 189, § 7(3), eff from and after July 1, 1948.

§ 61-1-23. Deposit and disbursement of funds.

All monies accepted for disbursement by the commission pursuant to Section 61-1-19 shall be deposited in the state treasury, and unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the monies were made available, and held by the state in trust for such purposes. All monies are hereby appropriated for the purposes for which the same were made available, to be expended in accordance with federal laws and regulations and with this chapter. The commission is authorized, whether acting for this state or as the agent of any of its municipalities or other person or persons, or when requested by the United States government or any agency or department thereof, to disburse such monies for the designated purposes, but this shall not preclude any other authorized method of disbursement.

HISTORY: Codes, 1942, § 7536-10; Laws, 1946, ch. 417, § 7(4); Laws, 1948, ch. 189, § 7(4), eff from and after July 1, 1948.

§§ 61-1-25 through 61-1-29. Repealed.

Repealed by Laws, 1984, ch. 516, § 9, eff from and after December 31, 1984.

§ 61-1-25. [Codes, 1942, § 7536-15; Laws, 1948, ch. 189, § 11; repealed Laws, 1982, ch. 469, § 9; reenacted Laws, 1984, ch. 516, § 9]

§ 61-1-27. [Codes, 1942, § 7536-15; Laws, 1948, ch. 189, § 11; repealed Laws, 1982, ch. 469, § 9; reenacted Laws, 1984, ch. 516 § 9]

§ 61-1-29. [Codes, 1942, § 7536-15; Laws, 1948, ch. 189, § 11; Laws, 1972, ch. 475, § 1; repealed Laws, 1982, ch. 469, § 9; reenacted Laws, 1984, ch. 516, § 9]

Editor's Notes — Former § 61-1-25 provided for the registration of aircraft, and the fees for registration.

Former § 61-1-27 provided the requisites for registering aircraft, provided for the issuance of certificates of registration, and made it unlawful to fail to register aircraft.

Former § 61-1-29 provided exemptions from registration requirements.

§ 61-1-31. Licensing of airports.

(1) **Site approvals.** Except as provided in this section, the commission is authorized to provide for the approval of airport sites and the issuance of certificates of such approvals. No charge shall be made for any such approval, and certificates of such an approval shall be issued without charge to all persons requesting them. Upon the promulgation of a rule or regulation providing for such approvals, any municipality or person desiring or planning to construct or establish an airport may, prior to the acquisition of the site or prior to the construction or establishment of the proposed airport, make application to the commission for approval of this site. The commission shall, with reasonable dispatch, grant approval of a site if it is satisfied: (a) that the site is adequate for the proposed airport; (b) that such proposed airport, if constructed or established, will conform to minimum standards of safety; and (c) that safe air traffic patterns could be worked out for such proposed airport and for all existing airports and approved airport sites in its vicinity. An approval of a site may be granted subject to any reasonable conditions which the commission may deem necessary to effectuate the purposes of this section, and shall remain in effect, unless sooner revoked by the commission, until a license for an airport located on the approved site has been issued pursuant to this section. The commission may, after notice and opportunity for hearing to holders of certificates of an approval, revoke such approval when it shall reasonably determine (1) that there has been an abandonment of the site as an airport site, or (2) that there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport or to comply with the conditions of the approval, or (3) that because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted. No approval shall be required for the site of any existing airport.

(2) **Optional public hearings.** In connection with the grant of approval of a proposed airport site or the issuance of an airport license under the provisions of this section, the commission may, on its own motion or upon the request of an affected or interested person, hold a hearing open to the public as provided in this section.

(3) **Exemptions.** The provisions of this section shall not apply to airports owned or operated by the United States or its agencies. The commission may, from time to time, to the extent necessary, exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation promulgated under this section or from any requirement of such a rule or regulation, if it finds that the application of such rule, regulation or requirement would be an undue burden on such class and is not required in the interest of public safety.

HISTORY: Codes, 1942, § 7536-16; Laws, 1948, ch. 189, § 12, eff from and after July 1, 1948.

Cross References — Municipal airport law, see §§ 61-5-1 et seq.
Acquisition of airport by county, see § 61-5-73.
Acquisition of airport by municipality, see § 61-5-75.

RESEARCH REFERENCES

Am. Jur.
1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 61-1-33. Approval of municipal projects.

No municipality in this state, whether acting alone or jointly with another municipality, or with the state, shall submit to any federal agency or department of the United States any project application under the provisions of any act of Congress which provides airport planning funds or airport construction and development funds for the expansion and improvement of the airport system unless the project and project application have been first approved by the Mississippi Transportation Commission.

HISTORY: Codes, 1942, § 7536-25; Laws, 1948, ch. 189, § 20; Laws, 1974, ch. 447; Laws, 1992, ch. 496, § 28, eff from and after July 1, 1992.

Cross References — Municipal airport law, see §§ 61-5-1 et seq.
Acquisition of airport by county, see § 61-5-73.
Acquisition of airport by municipality, see § 61-5-75.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 82 et seq.

§ 61-1-35. Conduct of investigations, inquiries and hearings.

The commission, any member thereof, the director or any officer or employee of the commission designated by it, shall have the power to hold investigations, inquiries and hearings concerning matters covered by the provisions of this chapter and the rules, regulations and orders of the commission, and concerning accidents in aeronautics within this state. Hearings shall be open to the public, and, except as provided in this chapter, shall be held upon such call or notice as the commission shall deem advisable. Each member of the commission, the director and every officer or employee of the commission designated by it to hold any inquiry, investigation or hearing shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and order the attendance and testimony of witnesses and the production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the commission or its authorized representative may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof.

HISTORY: Codes, 1942, § 7536-17; Laws, 1948, ch. 189, § 13(1), eff from and after July 1, 1948.

§ 61-1-37. Use and limitations on reports of investigations and hearings.

In order to facilitate the making of investigations by the commission in the interest of public safety and promotion of aeronautics, the public interest requires, and it is therefor provided, that the reports of investigations or hearings or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action or proceeding growing out of any matter referred to in said investigation, hearing or report thereof, except in case of any suit, action or proceeding, civil or criminal, instituted by or in behalf of the commission or in the name of the state under the provisions of this chapter or other laws of the state relating to aeronautics. No member of the commission, or the director, or any officer or employee of the commission shall be required to testify to any facts ascertained in, or information gained by reason of, his official capacity, or be required to testify as an expert witness in any suit, action or proceeding involving any aircraft. Subject to the foregoing provisions, the commission may in its discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigations and hearings.

HISTORY: Codes, 1942, § 7536-18; Laws, 1948, ch. 189, § 13(2), eff from and after July 1, 1948.

§ 61-1-39. Federal-state joint hearings; cooperation between governments; accident reporting.

The commission is authorized to confer with or to hold joint hearings with any agency of the United States in connection with any matter arising under this chapter, or relating to the sound development of aeronautics.

The commission is authorized to avail itself of the cooperation, services, records and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of this chapter. The commission shall furnish to the agencies of the United States its cooperation, services, records and facilities, insofar as may be practicable.

The commission shall report to the appropriate agency of the United States all accidents in aeronautics in this state of which it is informed, and shall insofar as is practicable preserve, protect and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until the federal agency institutes an investigation.

HISTORY: Codes, 1942, § 7536-19; Laws, 1948, ch. 189, § 14, eff from and after July 1, 1948.

§ 61-1-41. Use of state and municipal facilities and services.

In carrying out the provisions of this chapter the commission may use the facilities and services of other agencies of the state and of the municipalities of the state to the utmost extent possible. Such agencies and municipalities are authorized and directed to make available their facilities and services.

HISTORY: Codes, 1942, § 7536-20; Laws, 1948, ch. 189, § 15, eff from and after July 1, 1948.

§ 61-1-43. Enforcement of chapter and rules and regulations.

It shall be the duty of the commission, its members, the director, officers and employees of the commission, and every state and municipal officer charged with the enforcement of state and municipal laws, to enforce and assist in the enforcement of this chapter and of all rules, regulations and orders issued pursuant thereto and of all other laws of this state relating to aeronautics. In that connection each of the aforesaid persons is authorized to inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, air navigation facilities, air schools, or other aeronautical activities are operated or conducted. In aid of the enforcement of this chapter, the rules, regulations and orders issued pursuant thereto and of all other laws of the state relating to aeronautics, general police powers are hereby conferred upon the commission, each of its members, the director, and such of the officers and employees of the commission as may be designated by it to exercise such powers.

The commission is authorized, in the name of the state, to enforce the provisions of this chapter and the rules, regulations and orders issued pursuant thereto by injunction or other legal process in the courts of this state.

HISTORY: Codes, 1942, § 7536-21; Laws, 1948, ch. 189, § 16, eff from and after July 1, 1948.

§ 61-1-45. Commission orders.

Every order of the commission requiring performance of certain acts or compliance with certain requirements, and every denial or revocation of an approval, certificate or license, shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the commission will be given or the approval, license or certificate granted or restored or the order modified or changed. Orders issued by the commission pursuant to the provisions of this chapter shall be served upon the persons affected either by registered mail or in person. In every case where notice and opportunity for hearing are required under the provisions of this chapter the order of the commission shall, on not less than thirty days' notice, specify a time when and place where the person affected may be heard, or the time within which he may request hearing. Such order shall become effective upon the expiration of the time for exercising such opportunity for hearing, unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the commission shall affirm, disaffirm or modify such order after hearing held or default by the person affected. To the extent practicable, hearings on such orders shall be held in the county where the affected person resides or does business. Any person aggrieved by an order of the commission or by the grant, denial or revocation of any approval, license or certificate may have the action of the commission reviewed by the circuit court of Hinds County, Mississippi, on appeal thereto.

HISTORY: Codes, 1942, § 7536-22; Laws, 1948, ch. 189, § 17, eff from and after July 1, 1948.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 61-1-47. Penalties for violations of chapter and rules and regulations.

Any person violating any of the provisions of this chapter or any of the rules, regulations or orders issued pursuant thereto, shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment of more than six (6) months, or both.

For any violation of the provisions of this chapter, in addition to, or in lieu of, the penalties provided by the first paragraph of this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, the court, in its discretion, may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court. Upon a plea of guilty or conviction hereunder in any case involving a registrant, under the provisions of this chapter, the court shall cause a notation of such plea or conviction and of the sentence imposed to be marked upon the pilot certificate or other evidence of pilot registration or receipt provided by the commission under the provisions of this chapter and the court shall cause a copy of its order or sentence to be forwarded to the commission, the cost of furnishing same to be added as a part of cost in such cause. In no event shall this paragraph be construed as warrant for the court or any other agency or person to take away, impound, hold or mark any federal airman or aircraft certificate, permit, rating or license, or to take away, impound or hold any state registration certificate or other evidence of such registration.

HISTORY: Codes, 1942, § 7536-23; Laws, 1948, ch. 189, § 18; Laws, 1956, ch. 361.

§ 61-1-49. Exchange of information as to violations.

The commission is authorized to report to the appropriate federal agencies and agencies of other states all proceedings instituted charging violation of the provisions of this chapter and all penalties, of which it has knowledge, imposed upon airmen or the owners or operators of aircraft for violations of the law of this state relating to aeronautics or for violations of the rules, regulations or orders of the commission. The commission is authorized to receive reports of penalties and other data from agencies of the federal government and other states, and when necessary, to enter into agreements with federal agencies and the agencies of other states governing the delivery, receipt, exchange and use of reports and data. The commission may make the reports and data of the federal agencies, the agencies of other states, and the courts of this state available, with or without request therefor, to any and all courts of this state, and to any officer of the state or of a municipality authorized pursuant to the provisions of this chapter to enforce the aeronautics laws.

HISTORY: Codes, 1942, § 7536-24; Laws, 1948, ch. 189, § 19, eff from and after July 1, 1948.

CHAPTER 3.

AIRPORT AUTHORITIES

Sec.

61-3-1. Short title.
61-3-3. Definitions.
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61-3-67. Joint operations; authorization.
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Sec.	
61-3-79.	Municipal cooperation with authority.
61-3-81.	Effect of chapter upon municipal airport zoning regulation.
61-3-83.	Acquisition, etc., of airports, air navigation facilities, etc.; tort liability.
61-3-85.	Certain persons prohibited from deriving income from issuance of bonds.

§ 61-3-1. Short title.

This chapter may be cited as the "Airport Authorities Law."

HISTORY: Codes, 1942, § 7545-52; Laws, 1958, ch. 230, § 22.

Cross References — Municipal airport law, see §§ 61-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

Omission in the Airport Authorities Law of any provision for immunity in tort continued in effect the rule of law that an Airport Authority had no immunity from suit arising out of proprietary or corporate functions. Anderson v. Jackson Municipal Airport Authority, 419 So. 2d 1010, 1982 Miss. LEXIS 2143 (Miss. 1982).

Allegations of supply equipment for maintenance purposes are sufficient to describe proprietary or corporate functions of an Airport Authority for which there is no immunity from suit. Anderson v. Jackson Municipal Airport Authority, 419 So. 2d 1010, 1982 Miss. LEXIS 2143 (Miss. 1982).

RESEARCH REFERENCES

Law Reviews.

1982 Mississippi Supreme Court Review: Torts; Sovereign Immunity as a Defense to Tort Liability. 53 Miss. L. J. 171, March, 1983.

§ 61-3-3. Definitions.

The following words or terms, whenever used or referred to in this chapter, shall have the following respective meanings unless different meanings clearly appear from the context:

(a) "Airport" means any area of land or water which is used, or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, or for other appropriate purposes, including buffer areas and areas for airport compatible development, together with all buildings and facilities located thereon.

(b) "Airport-related contracts, leases and other arrangements" means any leases, contracts or other arrangements entered into by an authority in accordance with Section 61-3-21 other than any:

(i) Unrelated contracts, leases and other arrangements, as defined in this section; and

(ii) Leases, contracts or other arrangements related primarily to buffer areas or other such areas for airport compatible development and any buildings or facilities located thereon.

(c) "Airport authority" or "authority" means any airport authority created pursuant to the provisions of this chapter.

(d) "Airport hazard" means any structure, object or natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport, or is otherwise hazardous to such landing or taking off of aircraft.

(e) "Air navigation facility" means any facility other than one owned and operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(f) "Bonds" means any bonds, notes, interim certificates, debentures or similar obligations issued by an authority pursuant to this chapter.

(g) "Governing body" means the official or officials authorized by law to exercise ordinance or other lawmaking powers of a municipality.

(h) "Local government" means any local governmental unit as defined in Section 17-13-5.

(i) "Municipal airport authority" or "municipal authority" means a municipal airport authority created pursuant to the provisions of Section 61-3-5 or 61-3-6.

(j) "Municipality" means any county, supervisors district or supervisors districts, or all that portion of the county lying outside the territorial boundaries of any named city, town or village, and a city, town and village of this state or any state-supported institution of higher learning or any public community or junior college.

(k) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(*l*) "Regional airport authority" or "regional authority" means a regional airport authority created pursuant to the provisions of Section 61-3-7.

(m) "Unrelated contracts, leases and other arrangements" means any lease, contract or other arrangement entered into by the authority in accordance with Section 61-3-21 pursuant to which the current, primary use of the structures, improvements or other facilities erected, installed, constructed or located in connection therewith are substantially unrelated to the support of the following airport-related activities:

(i) The taking off and landing of commercial and private aircraft at the airport or air navigation facility;

(ii) The maintenance or repair of commercial or private aircraft taking off and landing at the airport or air navigation facility;

(iii) The storage, via hanger or otherwise, of commercial or private aircraft taking off and landing at the airport or air navigation facility;

(iv) The shipping or transporting of freight by aircraft at the airport or air navigation facility;

(v) The provision of ground and air transportation services to commercial or private aircraft passengers;

(vi) The supplying of goods, commodities, things, services or facilities primarily:

1. To commercial and private aircraft taking off and landing at the airport or air navigation facility; or
2. Within the airport terminal building to commercial or private aircraft passengers in the process of traveling on such aircraft.

(vii) Any fixed base operator activities providing aviation services at the airport or air navigation facility.

HISTORY: Codes, 1942, § 7545-31; Laws, 1958, ch. 230, § 1; Laws, 1978, ch. 362, § 1; Laws, 1992, ch. 379, § 2; Laws, 1999, ch. 309, § 1; Laws, 2004, ch. 335, § 1; Laws, 2016, ch. 456, § 2, eff from and after July 1, 2016; Laws, 2019, ch. 302, § 1, eff from and after passage (approved March 6, 2019).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (a). The word "takeoff" was changed to "taking off". The Joint Committee ratified the correction at its July 8, 2004 meeting.

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

RESEARCH REFERENCES

ALR.

Liability of United States for negligence of air traffic controller. 46 A.L.R. Fed. 24.

Am. Jur.

8A Am. Jur. 2d, Aviation § 1.

CJS.

2A C.J.S., Aeronautics and Aerospace §§ 3 et seq.

§ 61-3-5. Creation of municipal airport authority; applicability.

Any municipality or a state-supported institution of higher learning or a public community or junior college, by resolution, may create a public body, corporate and politic, to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality or of the state-supported institution of higher learning or other public community or junior college, pursuant to the resolution, shall appoint five (5) persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4) and five (5) years, respectively. Thereafter, each commissioner shall be appointed for a term of five (5) years, except that vacancies occurring otherwise than by the expiration of term shall be filled for the unexpired term in the same manner as the original appointments. This section shall not apply to the airport authority created in Section 61-3-6.

HISTORY: Codes, 1942, § 7545-32; Laws, 1958, ch. 230, § 2; Laws, 1999, ch. 309, § 2; Laws, 2016, ch. 456, § 3, eff from and after July 1, 2016.

Cross References — General jurisdiction and powers of counties, see § 19-3-41.
General powers of municipalities, see § 21-17-1.
Acquisition of airport by county, see § 61-5-73.
Acquisition of airport by municipality, see § 61-5-75.
Lease of municipal airport facilities to private concerns in certain municipalities, see § 61-5-91.

OPINIONS OF THE ATTORNEY GENERAL

There is no authority for county to donate funds to municipal airport authority which county has not created pursuant to Section 61-3-5 but county could provide financial support to authority pursuant to proper interlocal agreement under Section 17-13-1 et. seq. Leggett, March 9, 1994, A.G. Op. #93-1022.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation § 90.

§ 61-3-6. Creation of Jackson Metropolitan Area Airport Authority.

(1) The Jackson Metropolitan Area Airport Authority is created and established and full power is vested in the authority to manage, control and enforce all necessary and beneficial matters pertaining to the operation of Jackson-Medgar Wiley Evers International Airport and Hawkins Field Airport. The authority shall have the same powers and duties as a municipal airport authority under this chapter and any other laws pertaining to municipal airport authorities except in respect to the sale or disposal of real property prohibited under subsection (5)(a) of this section.

(2) The Jackson Metropolitan Area Airport Authority shall consist of the following nine (9) commissioners:

(a) The Adjutant General of the Mississippi National Guard, or his designee;

(b) The Executive Director of the Mississippi Development Authority, or his designee;

(c) One (1) commissioner appointed by the Mayor of the City of Jackson appointed for an initial term of one (1) year;

(d) One (1) commissioner appointed by the City Council of the City of Jackson appointed for an initial term of two (2) years;

(e) One (1) commissioner appointed by the Board of Supervisors of Madison County appointed for an initial term of three (3) years;

(f) One (1) commissioner appointed by the Board of Supervisors of Rankin County appointed for an initial term of four (4) years;

(g) Two (2) commissioners appointed by the Governor from the City of Jackson appointed for terms of (5) years one of whom shall be the holder of a valid pilot's license or certification issued by the Federal Aviation Administration; and

(h) One (1) commissioner appointed by the Lieutenant Governor from the City of Jackson appointed for a term of five (5) years.

(3) Unless otherwise provided in subsection (2) of this section, commissioners appointed under paragraphs (c) through (h) of subsection (2) of this section shall be persons with at least ten (10) years' experience as a certified public accountant or charter financial analyst, business owners with at least ten (10) years' experience in executive management, persons with at least ten (10) years' experience in the aviation industry, persons with at least ten (10) years' experience in economic development, attorneys with at least ten (10) years' experience in commercial law, construction law or aviation law, persons who have been holders of a pilot's license or certification issued by the Federal Aviation Administration for at least ten (10) years, persons with at least ten (10) years' experience in dealing with public financing transactions, or persons holding certificates of registration as a professional engineer with at least ten (10) years' experience in the practice of engineering.

(4) After the initial terms, commissioners shall be appointed in the same manner as the original appointment for terms of five (5) years or until their successor is appointed and qualified. Vacancies occurring other than the expiration of a term shall be filled for the unexpired term in the same manner as the original appointment.

(5)(a) Upon review and approval by the Federal Aviation Administration (FAA) of the Jackson Metropolitan Area Airport Authority as an eligible airport sponsor and the FAA's review and approval of the issuance of an airport operating certificate under 14 CFR part 139 with respect to the Jackson-Medgar Wiley Evers International Airport, the Jackson Municipal Airport Authority is abolished, and all powers and duties, airport equipment, buildings, facilities, inventories, records, personnel, resources and all other property, real or personal, tangible or intangible, including any pertaining to or generated from revenues of the airport, are transferred to the Jackson Metropolitan Area Airport Authority. The Jackson Metropolitan Area Airport Authority may not, by sale or otherwise, dispose of any real property acquired by transfer in accordance with this paragraph (a) or subsequently acquired by the authority.

(b) Upon the transfer required by paragraph (a) of this subsection, the Jackson Metropolitan Area Airport Authority shall assume all obligations of the Jackson Municipal Airport Authority pertaining to the airport that are in effect at the time of the transfer.

HISTORY: Laws, 2016, ch. 456, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1) by substituting "of this section" for "or this section" at the end. The Joint Committee ratified the correction at its August 5, 2016, meeting.

§ 61-3-7. Creation of regional airport authority; sharing a commissioner on the authority.

(1) Two (2) or more municipalities or two (2) or more municipalities and any state-supported institution of higher learning or a public community or junior college, by resolution of each, may create a public body, corporate and politic, to be known as a regional airport authority which shall be authorized to exercise its functions upon the issuance by the Secretary of State of a certificate of incorporation. The governing body of each municipality, the institution of higher learning or the public community or junior college, pursuant to its resolution, shall appoint one (1) person as a commissioner of the authority. However, if the regional airport authority consists of an even number of participants, which include two (2) or more municipalities or two (2) or more municipalities and a state institution of higher learning or a public community or junior college, an additional commissioner shall be appointed by the Governor. Such additional commissioner shall be a resident of a county other than the counties of the participating municipalities but contiguous to at least one (1) of such counties.

(2) A regional airport authority may be increased from time to time to serve one or more additional municipalities if each additional municipality and each of the municipalities and the institution of higher learning or the public community or junior college then included in the regional authority and the commissioners of the regional authority, respectively, adopt a resolution consenting thereto. If a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority shall consent to the inclusion of the municipality, institution of higher learning or the public community or junior college in the regional authority, and if the municipal authority has any bonds outstanding, unless the holders of fifty-one percent (51%) or more in amount of the bonds consent, in writing, to the inclusion of the municipality in the regional authority, no such inclusion shall be effected. Upon the inclusion of any municipality, institution of higher learning or the public community or junior college in the regional authority, all rights, contracts, obligations and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

(3) A regional airport authority may be decreased if each of the municipalities and the institution of higher learning or the public community or

junior college then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provision for the retention or disposition of its assets and liabilities. However, if the regional authority has any bonds outstanding, no decrease shall be effected unless seventy-five percent (75%) or more of the holders of the bonds consent thereto in writing.

(4) If a municipality so elects, it may share its commissioner position with another municipality that is not then a participant in the regional authority. In order to do so, the initiating and participating municipalities, and the joining municipality, all other municipalities participating at that time, and the commissioners of the regional authority, must adopt resolutions consenting to the sharing of the position. The initiating municipality and the joining municipality must reach an agreement to jointly determine the method for the appointment of their joint commissioner. Upon the adoption of the resolutions of authorization and the execution of the agreement between the participating and joining municipalities, the joint commissioner shall have the same powers, authority, duties and obligations otherwise vested in commissioners of the regional authority.

(5) A municipality, institution of higher learning or public community or junior college shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least ten (10) days before the hearing in a newspaper published in the municipality, in the institution of higher learning or in the public community or junior college, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality, in the institution of higher learning or in the public community or junior college.

(6) At the expiration of the term of all commissioners serving as of January 1, 1978, the airport authority shall effect staggered terms by the drawing of lots and reporting thereon to appointing authorities. The commissioners shall be designated to serve for terms of one (1) year, two (2) years, three (3) years, four (4) years and so forth depending upon the number of participating appointing authorities. Thereafter, each commissioner shall be appointed for a term of five (5) years except that vacancies occurring otherwise than by expiration of terms shall be filled for the unexpired term in the same manner as the original appointment.

HISTORY: Codes, 1942, § 7545-33; Laws, 1958, ch. 230, § 3; Laws, 1978, ch. 396, § 1; Laws, 1999, ch. 309, § 3; Laws, 2011, ch. 448, § 1, eff from and after passage (approved Mar. 23, 2011).

Cross References — General jurisdiction and powers of counties, see § 19-3-41.
General powers of municipalities, see § 21-17-1.
Acquisition of airport by county, see § 61-5-73.
Acquisition of airport by municipality, see § 61-5-75.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation § 90.

§ 61-3-8. Government of regional airport authority located within two or more judicial districts.

A regional airport authority located outside of municipal boundaries and that is within two (2) or more judicial districts may, in its discretion, adopt a resolution declaring which judicial district shall govern the regional airport authority. Upon adoption of the resolution, the regional airport authority shall be governed by all laws, regulations, rules and ordinances applicable to the judicial district.

HISTORY: Laws, 1992, ch. 464, § 3, eff from and after passage (approved May 5, 1992).

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 90, 91.

CJS.
2A C.J.S., Aeronautics and Aerospace § 58.

§ 61-3-9. Certificate of incorporation of regional airport authority.

Upon the appointment and qualification of the commissioners first appointed to a regional airport authority, they shall submit to the secretary of state a certified copy of each resolution adopted pursuant to subsection (1) of Section 61-3-7 by the municipalities included in the regional authority. Upon receipt thereof, the secretary of state shall issue a certificate of incorporation to the regional airport authority.

When a regional airport authority is increased or decreased pursuant to subsections (2) and (3) of Section 61-3-7, it shall forward to the secretary of state a certified copy of each resolution adopted pursuant thereto and, upon receipt thereof, the secretary of state shall issue an amended certificate of incorporation in accordance therewith.

HISTORY: Codes, 1942, § 7545-34; Laws, 1958, ch. 230, § 4.

§ 61-3-11. Proof of existence and authority of airport authority.

In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of a municipal airport authority, created pursuant to Section 61-3-5, the municipal authority shall be conclusively deemed to have become established and authorized to transact its business and exercise its powers upon proof of the adoption by the municipality of the resolution creating the municipal airport authority and of the appointment and qualification of the first commissioners thereof. Duly certified copies of the resolution creating the authority and of the certificates of appointment of the commissioners shall be admissible in evidence in any suit, action, or proceeding.

In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of a regional airport authority, such regional airport authority shall be conclusively deemed to have become established and authorized to transact its business and exercise its powers upon proof of the issuance by the secretary of state of a certificate of incorporation of such regional airport authority. A copy of such certificate of incorporation, duly certified by the secretary of state, shall be admissible in evidence in any suit, action, or proceeding.

HISTORY: Codes, 1942, § 7545-35; Laws, 1958, ch. 230, § 5.

§ 61-3-13. Compensation of commissioners; meetings of authority; voting; officers.

(1) Each commissioner of a regional or municipal airport authority may receive from that airport authority per diem compensation in the amount provided by Section 25-3-69 for each day or fraction of a day engaged in attendance of meetings of the authority or engaged in other official duties of the authority, not to exceed one hundred twenty (120) days in any one (1) year, and may receive from the airport authority actual traveling expenses incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

(2) The powers of each authority shall be vested in the commissioners of that authority. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting the business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present. There shall be elected a chairman and vice chairman from among the commissioners.

(3) The commissioners of an authority shall designate an executive director, who shall be the chief executive officer of the authority and shall perform those duties as are required by law and any other duties as may be assigned by the commissioners. The commissioners may designate the executive director as the purchasing agent of the authority. If so designated, the executive director shall have the authority of the purchasing agent of a state agency under Section 31-7-13.

HISTORY: Codes, 1942, § 7545-36; Laws, 1958, ch. 230, § 6; Laws, 1978, ch. 396, § 2; Laws, 1994, ch. 384, § 1; Laws, 2004, ch. 433, § 2; Laws, 2012, ch. 450, § 1, eff from and after passage (approved Apr. 19, 2012).

§ 61-3-15. General powers of authority.

An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter (excluding the power to levy and collect taxes or special assessments) including, but not limited to, the power:

(a) To sue and be sued, to have a seal and to have perpetual succession.

(b) To purchase general liability insurance coverage, including errors and omissions insurance, for its officials and employees.

(c) To employ an executive director, secretary, technical experts, and such other officers, agents and employees, permanent and temporary, as it may require, and to determine their qualifications and duties, and to establish compensation and other employment benefits as may be advisable to attract and retain proficient personnel. For regional airport authorities organized under Section 61-3-7, such employment benefits may include payment for all or part of dependent health insurance coverage.

(d) To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter.

(e) To plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate and protect airports and air navigation facilities within this state and within any adjoining state, including the acquisition, lease, lease-purchase, construction, installation, equipment, maintenance and operation of such airports or buildings, equipment and other facilities or other property for the servicing of aircraft or for the comfort and accommodation of air travelers or for any other purpose deemed by the authority to be necessary to carry out its duties; to develop, operate, manage or own and maintain intermodal facilities to serve air and surface cargo and multimodal facilities to serve highway and rail passenger transportation needs to ensure interface and interaction between modes for cargo and passengers; to construct, improve, and maintain means of ingress and egress to airport properties from and over off-airport sites with approval of the city or county in which the off-airport site is located; to market, promote and advertise airport properties, goods and services; and to directly purchase and sell supplies, goods and commodities incident to the operation of its airport properties without having to make purchases thereof through the municipal governing authorities, and with the authority to utilize design-build and construction manager at-risk methods of construction in accordance with Sections 31-7-13.1 and 31-7-13.2. For all the previously stated purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards, to prevent the establishment of airport hazards or to carry out its duties.

(f) To acquire, by purchase, gift, devise, lease, lease-purchase, eminent domain proceedings or otherwise, existing airports and air navigation facilities. However, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality or public agency of this or any other state without the consent of such authority, municipality or public agency.

(g) To establish or acquire and maintain airports in, over and upon any public waters of this state, and any submerged lands under such public waters, and to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(h) To establish, enact and enforce ordinances, rules, regulations and standards for public safety, aviation safety, airport operations and the preservation of good order and peace of the authority; to prevent injury to, destruction of or interference with public or private property; to protect property, health and lives and to enhance the general welfare of the authority by restricting the movements of citizens or any group thereof on the property of the authority when there is imminent danger to the public safety because of freedom of movement thereof; to regulate the entrances to property and buildings of the authority and the way of ingress and egress to and from the same; to establish fire limits and to hire firemen, including aircraft fire and rescue and similar personnel, and to establish and equip a fire department to provide fire and other emergency services on any property of the authority; to regulate, restrain or prohibit construction failing to meet standards established by the authority; to appoint and discharge police officers with jurisdiction limited to property of the airport authority and authorization to enforce the ordinances, rules and regulations of the authority, as well as the laws of the State of Mississippi, and to issue citations for infractions of all of such ordinances, rules, regulations, standards and laws of the State of Mississippi returnable to the court of appropriate jurisdiction.

(i) To develop and operate an industrial park or parks and exercise all authority provided for under Chapter 7, Title 57, Mississippi Code of 1972.

(j) To attach, pursuant to the power and procedure set forth in Chapter 33, Title 11, Mississippi Code of 1972, the equipment of debtors of the authority.

(k) To enter into agreements with local governments pursuant to Section 17-13-1 et seq.

(*l*) To render emergency assistance to other airports within the United States at an aggregate cost of less than Twenty Thousand Dollars ($20,000.00) per emergency. The assistance authorized in this paragraph must be rendered within ninety (90) days after a state of emergency has been declared by the federal government, or by the local or state government that has jurisdiction over the area where the airport needing assistance is located.

(m) To enter into joint use or similar agreements with any department or agency of the United States of America or the State of Mississippi, including any military department of the United States of America or the State of Mississippi, with respect to the use and operation of, or services provided at, any airport or other property of the authority on the terms and conditions as the authority may deem appropriate, including provisions limiting the liability of the United States of America or the State of Mississippi for loss or damage to the authority if the authority determines that the limitation of liability is reasonable, necessary and appropriate under the circumstances.

(n) To enter into mutual aid agreements with counties and municipalities for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted; to participate in the Statewide Mutual Aid Compact (SMAC) in accordance with Section 33-15-19.

HISTORY: Codes, 1942, § 7545-37; Laws, 1958, ch. 230, § 7; Laws, 1978, ch. 396, § 3; Laws, 1979, ch. 441; Laws, 1980, ch. 410, § 1; Laws, 1984, ch. 495, § 30; Laws, 1985, ch. 447, § 1; reenacted and amended, Laws, 1985, ch. 474, § 29; Laws, 1986, ch. 438, § 42; Laws, 1987, ch. 483, § 43; Laws, 1988, ch. 442, § 40; Laws, 1989, ch. 537, § 38; Laws, 1990, ch. 518, § 39; Laws, 1991, ch. 618, § 39; Laws, 1992, ch. 379, § 3; Laws, 1992, ch. 491 § 41; Laws, 1994, ch. 394, § 1; Laws, 1994, ch. 580, § 1; Laws, 1997, ch. 422, § 1; Laws, 2008, ch. 419, § 1; Laws, 2009, ch. 371, § 1; Laws, 2012, ch. 450, § 2, eff from and after passage (approved Apr. 19, 2012); Laws, 2021, ch. 451, § 3, eff from and after July 1, 2021; Laws, 2022, ch. 373, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2021 amendment, in (e), deleted "dual-phase" preceding "design-build."

The 2022 amendment, in (c), added the last sentence.

Cross References — Procedures pertaining to remedy of attachment at law against debtors, see § 11-33-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Authority of regional airport authority to sell or develop surplus airport land or other lands for industrial purposes, see § 57-7-1 et seq.

Authority for the creation of a regional airport authority, see § 61-3-7.

OPINIONS OF THE ATTORNEY GENERAL

Under this section, there is no legal authority for the Jackson Municipal Airport Authority to grant parking passes to state legislators and local elected officials allowing them to park without charge at Jackson International Airport when not on official business. Moore, April 27, 1995, A.G. Op. #95-0157.

Section 61-3-15(c) cannot override the provisions of Section 31-7-13(g) regarding the ability to enter into change orders without board approval. Montague, Dec. 10, 1999, A.G. Op. #99-0647.

The determination of whether a particular expenditure contemplated pursuant to subsection (e) will "market, promote or advertise" the resources of the airport must be made by the governing authority, i.e., the airport authority, and such findings must be spread upon the minutes of the meeting at which the determination is made. Ozerden, Mar. 22, 2002, A.G. Op. #02-0122.

A regional airport authority may enforce contracts and leases of airport property in a court of competent jurisdiction, and the civil remedies available to the airport authority include eviction of tenants who are holding over without the permission of the airport authority as a result of breaches of contracts and/or leases; local prosecutors may also prosecute violations of state criminal laws and airport criminal ordinances in a court of competent jurisdiction; however, there is no authority for a regional airport authority to use the criminal process to seek civil remedies for breaches of contracts or leases or to enforce minimum standards for businesses which provide goods and services associated with the operation of regional airport. Montague, May 3, 2002, A.G. Op. #02-0199.

Violations of ordinances, rules, regulations, and standards described in subsection (h) may be charged in a court of competent jurisdiction. Montague, July 19, 2002, A.G. Op. #02-0345.

Since the Gulfport-Biloxi Regional Airport Authority does not have at least 50 employees, it may not create a self-insurance plan to reimburse employees for deductible payments they incur in excess of $500 up to $2,500.00 for health care costs per year. Faneca, July 16, 2003, A.G. Op. 03-0303.

The provisions of § 25-3-41 would not be applicable to expenses which are made under the authority of subsection (e) of this section for the purpose of marketing, promoting or advertising an airport. Faneca, Aug. 6, 2004, A.G. Op. 04-0391.

Municipal building code ordinances are effective and enforceable against private citizens constructing or erecting buildings or structures on property located within the municipal corporate limits but owned by a municipal airport authority. Kohnke, Aug. 11, 2005, A.G. Op. 05-0383.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 88 et seq.

3 Am. Jur. Legal Forms 2d, Aviation §§ 34:81 et seq. (airport facilities; leases and other agreements).

§ 61-3-17. Exercise of power of eminent domain.

In the acquisition of property by eminent domain proceedings authorized by this chapter, an authority shall proceed in the manner provided by Chapter 27 of Title 11, Mississippi Code of 1972, and as elsewhere provided by law. For the purpose of making surveys and examinations relative to eminent domain proceedings, it shall be lawful for the authority to enter upon the land, doing no unnecessary damage. Notwithstanding the provisions of any other statute or other law, an authority may take possession of any property to be acquired by eminent domain proceedings at any time after the commencement of such proceedings upon a specific finding by the authority of the public necessity for the immediate acquisition of the property pursuant to Section 11-27-81 et seq., and compliance with all the provisions of Section 11-27-81 et seq., including the provisions for making a deposit. The authority shall not be precluded from abandoning such proceedings at any time prior to final order and decree of the court having jurisdiction of such proceedings. The authority shall be liable to the owner of the property for any damage done to the property during possession thereof by the authority.

HISTORY: Codes, 1942, § 7545-38; Laws, 1958, ch. 230, § 8; Laws, 1996, ch. 404, § 3, eff from and after July 1, 1996.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the third sentence by substituting "Section 11-27-81 et seq." for "Sections 11-27-81 et seq" both times it appears. The Joint Committee ratified the correction at its August 10, 2022, meeting.

Cross References — Exercise of power of eminent domain under municipal airport law, see § 61-5-7.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 88 et seq.

§ 61-3-19. Disposal of airport property.

(1)(a) Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by Section 61-3-25, an authority may, by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, real or personal, or portion thereof or interest therein, acquired pursuant to this chapter. If Section 29-1-1 is applicable to a sale of real property, the sale shall comply with Section 29-1-1.

(b) If Section 29-1-1 is not applicable, the disposal by sale, lease or otherwise, shall be in accordance with the following procedure. The authority shall find and determine by resolution duly and lawfully adopted and spread upon its minutes that:

(i) The property is no longer needed for authority purposes and is not to be used in the authority's operation;

(ii) There is no state agency, board, commission or any governing authority within the state that has expressed a need or use for the property and the federal government has not expressed a need or use for the property; and

(iii) The use of the property for the purpose for which it is to be sold, leased or otherwise disposed of will promote and foster the development and improvement of the authority or of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof.

(2) After making the determinations, the authority may sell, lease or otherwise dispose of the property in accordance with applicable law and by any of the following methods:

(a) The authority may sell, lease or otherwise dispose of the property if the consideration is not less than the fair market price for the property as determined by averaging the appraisals of two (2) professional property appraisers selected by the authority and approved by the purchaser or lessee. Appraisal fees shall be shared equally by the authority and the purchaser or lessee.

(b) The authority may sell, lease or otherwise dispose of the property to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the authority's intention to lease, sell or otherwise dispose of the property and to accept sealed competitive bids for the sale, lease or disposal of the property. The authority shall thereafter accept bids for the sale, lease or disposal of the property and shall award the sale, lease or disposal to the highest bidder.

(c) The authority may sell and dispose of personal property at public sale for cash to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the authority's intention to sell and dispose of the personal property at public sale for cash. Any public sale for cash may be conducted by or on behalf of the authority. At the public sale for cash, the personal property shall be sold and disposed of to the highest bidder.

(d) The authority may sell and dispose of personal property by use of an Internet web service available to the public, including, but not limited to, an Internet auction website, for cash or irrevocable electronic transfer of funds, to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the following information:

(i) The authority's intention to sell and dispose of the personal property through use of the Internet web service;

(ii) The location on the Internet website where the personal property will be listed; and

(iii) The listing date and closing date of the Internet sale.

At the Internet sale, the personal property shall be sold and disposed of to the highest bidder; provided, all Internet sales shall comply with federal law. In the event that any Internet sale is not concluded for any reason, the authority may relist and sell the personal property by use of the same Internet web service without the public notice set forth in this paragraph.

Notwithstanding anything herein to the contrary, in the case of a sale, lease or disposal of property to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease or other disposal thereof may be effected in such manner and upon such terms as the commissioners of the authority may deem to be in the best interest of civil aviation.

(3) The authority may lease lands owned by the authority for oil, gas and mineral exploration and development upon the terms and conditions and for consideration as the authority shall deem proper and advisable. However, no oil, gas or mineral lease shall be for a primary term of more than ten (10) years and the lease or leases shall provide for annual rentals of not less than One Dollar ($1.00) per acre and shall provide for royalties of not less than three-sixteenths ($3/16$) of all oil, gas and other minerals produced, including sulphur. All rentals, royalties or other revenue payable under any lease executed under this section shall be paid to and collected by the authority. The leases shall specifically provide that, in no event, shall any such lease or the exercise of any rights thereunder, interfere with the use of any airport or air navigational facilities for their intended purposes.

HISTORY: Codes, 1942, § 7545-39; Laws, 1958, ch. 230, § 9; Laws, 1984, ch. 370; Laws, 1992, ch. 379, § 7; Laws, 1993, ch. 615, § 14; Laws, 1996, ch. 404, § 4; Laws, 2011, ch. 470, § 1; Laws, 2012, ch. 450, § 3; Laws, 2014, ch. 523, § 1, eff from and after July 1, 2014.

Cross References — Power of county to dispose of its real property, see § 19-7-3.

Power of municipality to dispose of its real property, see § 21-17-1.

Support of university or college airport by certain municipalities, see § 21-19-59.

State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

Disposal of airport property under municipal airport law, see § 61-5-9.

OPINIONS OF THE ATTORNEY GENERAL

Disposal and/or lease of surplus property "no longer needed for authority purposes" or operations must be accomplished in accordance with the enumerated procedures. Barnett, Nov. 27, 1991, A.G. Op. #91-0891.

An airport authority which sells surplus airport property pursuant to § 57-7-1 does not have to comply with the terms of § 61-3-19. Crowell, July 26, 2002, A.G. Op. #02-0358.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 88 et seq.

4 Am. Jur. Pl & Pr Forms (Rev), Aviation, Form 111.

3 Am. Jur. Legal Forms 2d, Aviation §§ 34:81 et seq.

Law Reviews.

1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 61-3-21. Operation and use privileges; exemption from taxation.

(1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases and other arrangements for terms not to exceed fifty (50) years with any persons:

(a) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

(b) Conferring the privilege of supplying goods, commodities, things, services or facilities at the airport or air navigation facility; and

(c) Making available services to be furnished by the authority or its agents at the airport or air navigation facility.

In each case the authority may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and which shall be established with due regard to the property and improvements used and the expenses of operation to the authority. In no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility or portion or facility thereof.

(2) Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by Section 61-3-25, Mississippi Code of 1972, an authority may, by contract, lease or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed fifty (50) years, the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority. However, no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsection (1) of this section.

(3) All airport-related contracts, leases and other arrangements entered into pursuant to this section are deemed to serve a public and governmental purpose as a matter of public necessity; therefore, all airport-related contracts, leases, and other arrangements and all structures, improvements and other facilities erected, installed, constructed or located in connection therewith on an airport or air navigation facility owned or controlled by an authority, or any portion of facility thereof or space therein, shall be free and exempt from all state, county and municipal ad valorem taxes on real property and personal property for so long as may otherwise be lawful, and the charges, rentals and fees received by an authority in connection with airport-related contracts, leases and other arrangements shall be deemed to be in lieu of said taxes.

HISTORY: Codes, 1942, § 7545-41; Laws, 1958, ch. 230, § 11; Laws, 1992, ch. 464, § 1; Laws, 2007, ch. 540, § 1; Laws, 2008, ch. 352, § 1, eff from and after passage (approved Mar. 26, 2008); Laws, 2019, ch. 302, § 2, eff from and after passage (approved March 6, 2019).

Cross References — Operation and use privileges under municipal airport law, see § 61-5-11.

JUDICIAL DECISIONS

ANALYSIS

1. Exemption appropriate
2. Tax exmpetion.

1. Exemption appropriate

Taxpayer was exempt from ad valorem taxes where its lease with the airport indicating that the land would be used for a shopping center and related improvements served a commercial purpose under Miss. Code Ann. § 61-3-21(1) (Rev. 2013), and the shopping center was compatible with the airport. Rankin Cty. Bd. of Supervisors v. Lakeland Income Props., LLC, 241 So. 3d 1279, 2018 Miss. LEXIS 198 (Miss. 2018).

Circuit court erred in refusing to allow the taxpayer to reach back three years given that the exemption under Miss. Code Ann. § 61-3-21(1) (Rev. 2013) was automatic. Rankin Cty. Bd. of Supervisors

v. Lakeland Income Props., LLC, 241 So. 3d 1279, 2018 Miss. LEXIS 198 (Miss. 2018).

2. Tax exmpetion.

Under Miss. Code Ann. § 61-5-11, a municipality may lease airport property only for the statutorily listed purposes, and the attendant tax exemption is automatic from the inception of the lease; at the crux of both Miss. Code Ann. §§ 61-3-21 and 61-5-11 are ad valorem tax exemptions applicable to airport leases, the statutes contain identically worded tax exemptions, and both statutes have identical requirements for what qualifies as a tax exempt lease. G4, LLC v. Pearl River Cty. Bd. of Supervisors, 289 So. 3d 283, 2020 Miss. LEXIS 32 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 61-3-21 authorizes airport authority to enter into lease granting any persons privilege of using or improving airport or any portion of airport for a term up to forty years; airport authority may establish terms and conditions of lease, and need not advertise property for lease before entering into lease and need not give notice to public of proposed lease; also, terms of lease must be reasonable and established with due regard to property and improvements used and expenses of operation. Dulaney, Jan. 20, 1993, A.G. Op. #92-0993.

Section 61-3-21 and Section 61-5-11 provide exemption from state, county and municipal taxes, including school taxes, for contracts, leases and other arrangements relating to such property when used in accordance with and for purposes stated in Section 61-3-21 and 61-5-11; leasehold interest in such property is also exempt from ad valorem taxes. Broome Aug. 30, 1993, A.G. Op. #93-0467.

The board of an airport established through an interlocal agreement between a city and a county had authority to enter into a contract to permit the holding of an air show and related activities on the airport runways and adjacent property, which agreement would have an initial term of three years, and would automatically renew for a period of one year to cover an additional annual air show. Bowman, Feb. 11, 2000, A.G. Op. #2000-0046.

Sections 61-3-21 and 61-5-11 clearly exempt from state, county, and municipal real and personal property ad valorem taxes any structures, improvements, and other facilities which are erected, installed, or located on that leasehold and in furtherance of these statutes. Mitchell, III, Apr. 19, 2002, A.G. Op. #02-0164.

Property which is utilized as an industrial park, even if it may be owned by a municipality or municipal airport authority, is not used in connection with the airport or air navigation facility and, therefore, the exemptions provided by §§ 61-3-21(3) and 61-5-11(3) are not be available to such property. Mitchell, III, Apr. 19, 2002, A.G. Op. #02-0164.

A regional airport authority has authority to lease real property to its parking concessionaire, a private entity, and the entity leasing the property would not be subject to the public purchasing and contracting provisions of Section 31-7-1 et seq. or the bonding and related provisions of Section 31-5-1 et seq. Faneca, Apr. 1, 2005, A.G. Op. 05-0114.

Real estate owned by a regional airport authority and leased to a private company is exempt from taxation and is not taxable to the private company. Andrews, Sept. 23, 2005, A.G. Op. 05-0462.

§ 61-3-23. Promulgation, repeal, etc., of resolutions, rules, regulations, orders and standards.

An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, regulations, and orders as it shall deem necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the commission shall be inconsistent with, or contrary to, this chapter, or any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and regulations.

HISTORY: Codes, 1942, § 7545-42; Laws, 1958, ch. 230, § 12.

§ 61-3-24. Lien on aircraft that land at airport for full amount of landing fees or other charges; enforcement of lien.

(1) An authority, at which a commercial airline lands an aircraft operating under its Federal Aviation Administration certificate, shall have a lien upon all aircraft that land at the authority's airport by the airline for the full amount of any landing fees, or other rates and charges previously promulgated by the authority in its rules and regulations, incurred by the airline at the airport by any aircraft operating under the airline's Federal Aviation Administration certificate.

(2) An authority may enforce any lien created herein against a nonresident debtor airline pursuant to the following procedure: a court of appropriate jurisdiction may issue a writ of sequestration, ex parte, against any aircraft operating under the Federal Aviation Administration certificate of the nonresident debtor airline and located at the airport operated by the authority. However, before issuing a writ of sequestration, the court shall find there is prima facie evidence that the nonresident debtor airline is past due on the landing fees or other rates and charges, that the authority has submitted prima facie evidence of exigent circumstances for the issuance of the writ, and that the authority has submitted a corporate surety bond in the amount of one hundred twenty-five percent (125%) of the past-due amount claimed. Upon issuing the writ of sequestration, the court shall grant the nonresident debtor airline an opportunity for an immediate evidentiary hearing to rebut the authority's claim and revoke the writ. The court shall allow the nonresident debtor airline to substitute in place of the sequestered aircraft a corporate surety bond with the court in the amount of one hundred twenty-five percent (125%) of the past-due amount claimed by the authority for the purpose of securing payment.

HISTORY: Laws, 2012, ch. 343, § 1, eff from and after passage (approved Apr. 16, 2012).

§ 61-3-25. Acceptance of federal and state aid; designation of agent.

An authority is authorized to accept, receive, receipt for, disburse, and expend federal and state monies and other monies, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter. All federal monies accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law. All state monies accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the state.

An authority is authorized to designate the Mississippi Transportation Commission as its agent to accept, receive, receipt for, and disburse federal and state monies, and other monies, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter, and an authority is authorized to designate such commission as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment or operation of any airport or other air navigation facility. An authority may enter into an agreement with the commission prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal monies accepted under this section by the commission shall be accepted and transferred or expended by such commission upon such terms and conditions as are prescribed by the United States. All monies received by the commission pursuant to this paragraph shall be deposited in the State Treasury, and unless otherwise prescribed by the agency from which such monies were received, shall be kept in separate funds designated according to the purposes for which the monies were made available, and held by the state in trust for such purpose.

HISTORY: Codes, 1942, § 7545-43; Laws, 1958, ch. 230, § 13; Laws, 1992, ch. 379, § 4; Laws, 1992, ch. 496, § 29, eff from and after July 1, 1992.

Editor's Notes — Section 61-3-25 was amended twice during the 1992 legislative session. By direction of the Attorney General, section 61-3-25, as amended by Laws of 1992, ch. 496, § 29, is set out above as the latest expression of legislative intent.

Cross References — General powers and duties of commission, see § 61-1-13.

Acceptance of federal and state aid under municipal airport law, see § 61-5-15.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 92 et seq.

§ 61-3-27. Issuance of bonds; attorneys' services.

An authority shall have the power to borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, which bonds may be payable out of any revenues of the authority, including grants or contributions from the federal government or other sources. Any bonds of an authority issued pursuant to this chapter which are payable, as to principal and interest, solely from revenues of an airport or air navigation facility (and they shall so state on their face) shall not constitute a debt of any municipality, the state, or any political subdivision thereof other than the authority, and shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Neither the commissioners of an authority nor any person executing such bonds shall be liable personally thereon by reason of the issuance thereof, provided the issuance is in compliance with this chapter.

An authority proposing to issue bonds or notes as defined in this chapter of any kind, nature, or description shall have, prior to authorization, issuance, and subsequent validation thereof, secured the legal services of a competent practicing attorney or firm of attorneys. In no instance shall the attorney's fees paid for the issuance or refunding of such bonds exceed the following amounts, to wit:

On all such bond issues the attorney's fees shall not exceed one percent (1%) of the first five hundred thousand dollars ($500,000.00); one-half percent (½%) of all over five hundred thousand dollars ($500,000.00) and not more than one million dollars ($1,000,000.00); and one-fourth percent (¼%) of all amounts in excess of one million dollars ($1,000,000.00).

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

Issuance of bonds under municipal airport law, see § 61-5-17.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 72 et seq.

§ 61-3-29. Issuance of bonds; authorization resolution.

The issuance of bonds by an authority shall be authorized by a resolution of the governing body of such authority. Every such resolution shall be adopted by the affirmative vote of at least three-fifths (⅗) of all the members of such governing body.

A resolution in compliance with this section shall include any covenants with the bondholders deemed necessary by the commissioners to make such bonds secure and marketable, including, but without limitation, covenants regarding the application of the bond proceeds; the pledging, application and securing of the revenues of the authority, the creation and maintenance of reserves; the investment of funds; the issuance of additional bonds; the maintenance of minimum fees, charges and rentals; the operation and maintenance of its airport; insurance and insurance proceeds; accounts and audits; the sale of airport properties; remedies of bondholders; the vesting in a trustee or trustees such powers and rights as may be necessary to secure the bonds and the revenues and funds from which they are payable; the terms and conditions upon which bondholders may exercise their rights and remedies; the replacement of lost, destroyed or mutilated bonds; the definition, consequences and remedies of an event of default; the amendment of such resolution; and the appointment of a receiver in the event of a default.

Upon final enactment, each resolution authorizing bonds shall be published in full.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Issuance of short term notes to provide for the safe and convenient operation of airports, see § 61-3-60.

Authorization for short term borrowing by airport authorities, see § 61-3-60.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 72 et seq.

§ 61-3-31. Grounds for contesting validation of bonds.

After the publication of such authorizing resolution or amendatory resolution, if any, the validation of the bonds authorized thereby may be contested only if:

(a) Such bonds were authorized for an objective or purpose for which the political subdivision is not authorized to expend money, or

(b) The provisions of law which should have been complied with, on or before the date of such publication, were not complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after such publication of the resolution authorizing the bonds, or, as to changes made by an amendatory resolution, within twenty days after such publication of such amendatory resolution, or

(c) Such bonds were authorized in violation of the provisions of the constitution or laws of Mississippi.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35 § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 294 et seq, 352.

§ 61-3-33. Conclusiveness of authority's classification of project and period of usefulness.

The determination of the authority, in the resolution authorizing bonds, as to the classification of the project for which such bonds are authorized and as to the maximum period of usefulness, shall be conclusive in any action or proceeding involving the validity of such bonds.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

§ 61-3-35. Notice of sale of bonds.

(1) Bonds issued under this chapter may be sold on sealed bids at public sale after publication of at least three (3) weekly notices, published in a financial publication carrying political subdivision bond notices and devoted primarily to financial news or to the subject of state and political subdivision bonds and having circulation among a large number of dealers in political subdivision bonds.

(2) The public notice of sale shall describe the bonds or notes and set forth the terms and conditions of sale. It shall invite bidders to name the rate or rates of interest to be borne by the bonds or notes, which rate or rates shall be stated in conformity to the details of the issues as outlined in this chapter, all of which shall be included in the notice of sale.

(3) The notice of sale may permit bidders to name one or more interest rates for the bonds or notes proposed to be sold, within such limitations as outlined in Section 61-3-41.

The notice of sale shall state that all bonds or notes will be awarded to the bidder whose bid constitutes the lowest cost to the authority. The lowest cost to the authority shall be determined in accordance with the provisions of Section 61-3-41.

(4) The notice of sale, in case of a sale of more than one (1) issue of bonds payable from the same source, after describing the separate issues, shall state the combined maturities as if such combined maturities constituted a single issue. The notice of sale shall state that the bonds or notes will be awarded to the bidder whose bid constitutes the lowest cost as determined by Section 61-3-41, and, as between bidders whose bids constitute the same lowest cost to the authority, such lowest bidders may negotiate between themselves, immediately after the announcement of said bids as to the conditions upon which the bid shall be awarded. If no agreement is reached, the award shall be determined by lot fairly and publicly drawn.

(5) The notice of sale shall require all bidders except governmental agencies or departments to deposit a certified or cashier's check for two percent (2%) of the amount of bonds or notes proposed to be sold, partially to secure the authority from any loss resulting from the failure of the bidder to comply with the terms of his bid. In case the bidder to whom the award is made shall fail to comply with the award, his certified or cashier's check in the amount of two percent (2%) shall be forfeited to the authority. The certified or cashier's checks of unsuccessful bidders shall be returned promptly.

(6) Each notice of sale shall require the purchaser to pay interest accrued on the face amount of the bonds or notes awarded, at the rate borne thereby, from the date of the bonds or notes to the date of payment of the purchase price.

(7) Each notice of sale shall reserve the right to reject any and all bids and shall state that any bid not complying with the terms of the notice shall be rejected.

(8) Notwithstanding any provision to the contrary in this chapter, bonds or notes issued pursuant to this chapter may be sold at a private sale in a manner and at a price determined by the authority to be the most advantageous to the authority.

(9) Bonds or notes issued pursuant to this chapter may be for not less than ninety-eight percent (98%) of par value. Any notice of sale shall state whether or not the bonds or notes will be sold for less than their par value.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230 § 10; Laws, 1969, Ex. Sess. ch. 35, § 1; Laws, 1991, ch. 520, § 1, eff from and after passage (approved April 10, 1991).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

Certain persons prohibited from deriving income from issuance of bonds, see § 61-3-85.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 172 et seq.

§ 61-3-37. Opening and award of bids; payment of premium.

All proposals or bids shall be submitted to the authority in a sealed envelope and subsequently opened publicly at the time and place stated in the notice of sale, and each bid shall be publicly announced at the time of opening of bids. A determination with respect to acceptance of a bid shall be made promptly after receipt of bids and, if a bid is accepted, a prompt award of the bonds or notes shall be made in writing to the successful bidder.

Bonds and notes shall be awarded to the bidder whose bid specifies the lowest maximum interest cost.

Any premium must be paid in bank funds as a part of the purchase price. Bids shall not contemplate the cancellation of any interest coupon or the waiver of interest or other concession by the bidder as a substitute for bank funds.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations § 182.

§ 61-3-39. Payment of bonds.

All bonds except term bonds of a single issue shall be paid in consecutive annual or semiannual payments.

The first annual or semiannual principal payment upon each authorized issue shall be paid not more than thirty-six (36) months after the date of the bonds.

The last payment of each authorized issue of bonds shall mature not later than forty (40) years after its date of issue.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1; Laws, 1991, ch. 520, § 2, eff from and after passage (approved April 10, 1991).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

Certain persons prohibited from deriving income from issuance of bonds, see § 61-3-85.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 309 et seq.

§ 61-3-41. Interest on bonds; details of bonds generally.

All bonds shall bear interest at such rate or rates not to exceed that allowed in Section 75-17-103. No bond shall bear more than one (1) rate of interest. Each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid or as agreed to by the authority. All bonds of the same maturity shall bear the same rate of interest. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than two-thirds (⅔) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) interest coupon shall not exceed the maximum interest rate allowed on such bonds.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (⅒ of 1%), and a zero rate of interest cannot be named.

All bonds shall be lithographed, engraved or typewritten, shall be in denominations of not less than Five Thousand Dollars ($5,000.00), shall be registered by the authority, and shall be consecutively numbered in a regular series from one (1) upward. Each such bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued. The interest to accrue on each bond shall be evidenced by proper coupons to be attached thereto, unless the bonds are fully registered no-coupon bonds.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1; Laws, 1981, ch. 477, § 1; Laws, 1983, ch. 541, § 42; Laws, 1991, ch. 520, § 3, eff from and after passage (approved April 10, 1991).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

Certain persons prohibited from deriving income from issuance of bonds, see § 61-3-85.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 351 et seq.

§ 61-3-43. Execution of bonds.

All bonds and notes shall be executed in the name of the authority by the manual or facsimile signatures of such officials, including a financial officer, as may be designated by resolution and shall be under the seal (or a facsimile thereof) of the authority. At least one signature on each such bond or note shall be a manual signature. Coupons attached to a bond may be executed by the facsimile signature of the financial officer signing the bond.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230 § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 164 et seq.

§ 61-3-45. Form of bonds and notes; registration.

Bonds may be issued in form payable to bearer with coupons attached for the payment of interest and, if so issued, shall be subject to registration as to principal only or as to both principal and interest. Bonds may also be issued in fully registered form without coupons. Coupon and registered bonds shall be interchangeable only as provided in the resolution authorizing such bonds.

Notes may be issued in registered form or notes may be issued in form payable to bearer, with interest payable to bearer on presentation for endorsement and, if so issued, shall be subject to complete registration. Interest on notes issued in registered form and interest on bearer notes which have been registered shall be payable to the registered holder.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1; Laws, 1991, ch. 520, § 4, eff from and after passage (approved April 10, 1991).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

Certain persons prohibited from deriving income from issuance of bonds, see § 61-3-85.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 137, 148 et seq.

§ 61-3-47. Redemption of bonds and notes.

No bonds or notes shall be made payable on demand, but any bond or note may be made subject to redemption prior to maturity on such notice and at such time or times and with such redemption provisions as may be stated in the resolution authorizing the issuance of the bond or note. When any such bond or note shall have been validly called for redemption and payment of the principal thereof and of the interest thereon accrued to the date of redemption shall have been tendered or made, interest thereon shall cease. A complete schedule of redemption dates shall be included in the resolution authorizing the bond issue.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations § 157.

§ 61-3-49. Securing of bond by trust agreement.

In the discretion of the authority, all bonds may be further secured by a trust agreement between the authority and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the state. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law.

The trust agreement may contain provisions for the issuance of additional bonds under the procedures established by this chapter for any of the purposes authorized by this chapter which shall be secured by the revenues pledged thereunder for such bonds to the extent provided therein.

The trust agreement may include provisions to the effect that, if there is any default in the payment of principal or interest on any of said bonds, any court of competent jurisdiction may appoint a receiver to administer the properties and facilities of the authority described in the trust agreement on behalf of the authority, including authority to sell or make contracts for the sale of any services, facilities or commodities of the authority or to renew such contracts, subject to the approval of the court appointing the said receiver, and with power to provide for the payment of such bonds outstanding, or the payment of operating expenses, and to apply the income and revenues to the payment of the said bonds and interest thereon in accordance with the resolution of the authority authorizing the issuance of such bonds and the said trust agreement. The fee for the services of any corporate trustee shall not exceed the normal charges for acting as paying agent, plus any additional amount or amounts allowed by the court as the reasonable value of services rendered by the corporate trustee.

The powers herein granted may be exercised whether or not a trust agreement is entered into and, if no trust agreement is entered into, such provisions as are above authorized may be set out in the resolution authorizing the bonds.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

§ 61-3-51. Lien on revenues pledged to payment of bonds.

All revenues pledged to the payment of bonds shall be subject to a lien in favor of the holders of such bonds, and all such revenues received by the authority shall be immediately subject to such lien without any physical delivery thereof or further act by the authority. The lien shall be effective as against all parties asserting claims against the authority, whether by way of tort, contract or otherwise, whether or not such parties may have had notice of such lien. The pledge or trust agreement creating the same need not be filed or recorded except in the official minutes of the authority. The revenues may also be pledged as security for the payment of obligations due providers of credit enhancement with respect to any bonds issued.

The state does hereby covenant with the holders of any such bonds that it will not, while any such bonds shall be outstanding, limit or diminish the right and power of the authority to establish, maintain and collect rates, fees, rentals and other charges pledged to the payment of such bonds, or to fulfill any covenants with respect to rates, fees, rentals and other charges made by the authority with such bondholders.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1; Laws, 1991, ch. 520, § 5, eff from and after passage (approved April 10, 1991).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

Certain persons prohibited from deriving income from issuance of bonds, see § 61-3-85.

§ 61-3-53. Refunding bonds.

Any authority, authorized by a statute other than this chapter to refund its outstanding bonds and permitted to do so by the terms of any resolutions and trust agreements pertaining to such bonds, may refund all, or any part of, one or more bond issues. However, the refunding bonds shall be issued in accordance with the provisions of this chapter.

In no case shall any bonds be refunded whereby:

(a) The interest cost to the authority computed on the basis of the interest rates borne by the bonds refunded and by the refunding bonds, will be increased by reason of the refunding; or

(b) The average maturity of the bonds refunded, computed to their stated maturities will be increased by reason of the refunding; or

(c) The time at which bonds may be redeemed is more than twelve (12) months after the date of sale of the refunding bonds;

(d) However, if it can be clearly shown that the refunding is being accomplished to prevent default or to provide flexibility to the authority in the financing of its projects, and if the State Treasurer shall certify that the need to refund an outstanding issue to prevent default or to provide flexibility to the authority in the financing of its projects has been determined by sufficient evidence filed with the State Treasurer, the provisions of subsections (a), (b) and (c) shall not prevent refunding.

It shall not be necessary for the bonds refunded to be surrendered and cancelled simultaneously with the delivery of the refunding bonds, but the proceeds of the sale of the refunding bonds, not used to pay for surrendered and cancelled bonds at the time of refunding, shall be deposited in a trust fund under conditions satisfactory to the authority and the State Treasurer.

If the refunding bonds are being issued to prevent default, the authority may exchange them with bondholders under such rules and regulations as established by the State Treasurer.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1; Laws, 1991, ch. 520, § 6, eff from and after passage (approved April 10, 1991).

Cross References — Authorization for short term borrowing by airport authorities,

see § 61-3-60.
Certain persons prohibited from deriving income from issuance of bonds, see § 61-3-85.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 193 et seq.

§ 61-3-55. Redemption of bonds and notes.

Nothing contained in this chapter shall be construed to confer on any authority any right or option to redeem any bonds or notes heretofore or hereafter issued, except as is or may be provided in the proceedings under which such bonds were or shall be issued.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.
Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

§ 61-3-57. Negotiability of bonds, notes and coupons.

All bonds and notes and appurtenant coupons issued pursuant to this chapter shall be negotiable instruments within the meaning of the Uniform Commercial Code of the State of Mississippi.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.
Law of negotiable instruments under Uniform Commercial Code, see § 75-3-101 et seq.

§ 61-3-59. Bonds not to be delivered until validated.

No bonds shall be delivered to any purchaser by any authority unless they shall have first been validated in accordance with the provisions of Sections 31-13-1 through 31-13-11, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Securities and Obligations §§ 169 et seq.

§ 61-3-60. Short term borrowing by airport authorities.

(1) In addition to the power to borrow money pursuant to Sections 61-3-27 through 61-3-61, Mississippi Code of 1972, an airport authority may, in anticipation of the receipt of income, revenues, grants or subsidies from any source, including, but not limited to, the federal government or any federal agency, the state or any state agency, any municipality or taxing authority, or the proceeds of bonds authorized by Sections 61-3-27 through 61-3-61, Mississippi Code of 1972, borrow money to be payable over a period of time not to exceed ten (10) years, in an amount or amounts not to exceed in the aggregate Ten Million Dollars ($10,000,000.00) for the purposes and under the terms and conditions set out in subsections (2), (3), (4) and (5) of this section.

(2) Any loans made under this section shall be first authorized by resolution of the airport authority setting out the need for such loan, the purposes for which the proceeds shall be used, and the source or sources from which it anticipates that the loan shall be retired. The purposes for which such loans are authorized may include any purposes for which bonds may be issued under this chapter and for the maintenance and repair of runways, taxiways, ramps or other facilities necessary for the safe, orderly and convenient handling of aircraft traffic; and for the employment of personnel and purchase of supplies and equipment and payment of expenses which, in the judgment of the authority, shall be necessary or convenient in the safe operation of the airport facilities. The resolution shall also set out the schedule of repayment and may pledge therefor any anticipated funds not previously pledged to the retirement of the loan or loans.

(3) The loans authorized by this section may be made by any bank located in the State of Mississippi or by any trust companies or other lending institutions, investment banking firms or persons in the United States having the authority to enter into such loans. The loans may bear interest at a rate not to exceed thirteen percent (13%) per annum. The loans shall be evidenced by the notes of the airport authority and shall not constitute a debt of the commissioners thereof, and the lender shall have the right of mandamus and any other appropriate writ or legal or equitable remedy for the collection of the notes and the cost of collection.

(4) In order to provide for, and in connection with, such short-term borrowings, an airport authority is authorized to enter into any note, loan, credit agreement or agreements, or other agreement or agreements necessary therefor containing provisions not inconsistent with the provisions of this section.

(5) The interest on the notes authorized by this section shall at all times be exempt from all taxation in this state.

HISTORY: Laws, 1991, ch. 477, § 1; Laws, 1996, ch. 404, § 5; Laws, 1998, ch. 305, § 1; Laws, 2003, ch. 325, § 1, eff from and after passage (approved Mar. 7, 2003).

Editor's Notes — A former § 61-3-60, [En, Laws, 1979, ch. 339; repealed by Laws, 1979, ch. 339, § 4; En, Laws of 1981, ch. 467, § 1] repealed by Laws, 1981, ch. 467, § 3, effective from and after June 1, 1983, also provided for short term borrowing by an airport authority.

§ 61-3-61. Exemption from taxation of interest on bonds and notes.

The accomplishment of the purposes stated in this chapter being for the benefit of the people of this state and for the improvement of their properties and industries, the authority, in carrying out the purposes of this chapter, will be performing an essential public function, and the interest on the bonds and notes issued hereunder shall at all times be free from taxation within this state.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

Cross References — Authorization for short term borrowing by airport authorities, see § 61-3-60.

§ 61-3-63. Factors to be considered by authority in determining cost of project.

In determining the amount to be expended for a project pursuant to this chapter, the authority may include the engineering, legal, fiscal, architectural, inspection, recording, printing, publishing and related cost of the acquisition, construction or reconstruction of the property or improvement to be financed, including interest during construction.

HISTORY: Codes, 1942, § 7545-40; Laws, 1958, ch. 230, § 10; Laws, 1969, Ex. Sess. ch. 35, § 1, eff from and after passage (approved October 7, 1969).

§ 61-3-65. Exercise of incidental powers; issuance of general obligation municipal bonds for airport facilities; adoption of rules and regulations for management of airports.

In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers.

The governing authority of each municipality, as defined herein, shall have the authority to issue general obligation bonds of the municipality, as defined herein, for the purposes set out in Sections 61-5-17 and 19-9-1(j). For the purposes of this chapter, the portion of the county, being a supervisors district or supervisors districts, or that portion of the county lying outside the territorial boundary of the other participating municipalities, shall constitute a special taxing district and for all purposes under this chapter, taxes may be levied upon the property therein and such territory shall be considered a municipality for the issuance of bonds for the purposes of this chapter. Bonds issued pursuant to authority contained in this section shall, if issued by a city, town or village, be issued in conformity with the uniform system for the issuance of municipal bonds, as set out in Sections 21-33-301 through 21-33-329, inclusive, and, if issued by a special taxing district, be issued by the board of supervisors of the county, and shall be issued in conformity with the uniform system for the issuance of county bonds, being Sections 19-9-1 through 19-9-31, inclusive.

The regional airport authority shall have the power and authority to adopt all rules and regulations appropriate to the management of the airport and the activities conducted thereon, including the establishment of all rules and regulations with respect to automobiles and other traffic, the storage and disposition of property, including automobiles, and the disposition thereof of any unclaimed vehicles within a reasonable time. Such rules and regulations shall be posted in an accessible place at the airport terminal and shall be enforced by the courts of the county in which the airport is located.

HISTORY: Codes, 1942, § 7545-48; Laws, 1958, ch. 230, § 18; Laws, 1978, ch. 362, § 2, eff from and after July 1, 1978.

Cross References — Purposes for issuance of county bonds, see §§ 19-9-1 et seq.
Uniform system for issuance of municipal bonds, see §§ 21-33-301 et seq.
Issuance of bonds for financing acquisition costs and improvements, see § 61-5-17.

§ 61-3-67. Joint operations; authorization.

For the purposes of Sections 61-3-67 through 61-3-75, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this chapter, any agency of the state government and of the United States, and any municipality, political subdivision and agency of an adjoining state. The term "governing body" includes the commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality.

All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise of enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

HISTORY: Codes, 1942, § 7545-44; Laws, 1958, ch. 230, § 14.

Cross References — Joint operations under municipal airport law, see §§ 61-5-33 et seq.

JUDICIAL DECISIONS

1. Validity of agreements.

Circuit court erred in ruling a joint operations agreement between a Mississippi city and a Louisiana city and parish to create an airport was invalid since the city had not first created a separate corporate authority under either Miss. Code Ann. §§ 61-3-5 or 61-3-7; under Miss. Code Ann. §§ 61-3-67 and 61-3-69, no such intermediary was needed. Falco Lime, Inc. v. Mayor & Aldermen of Vicksburg, 836 So. 2d 711, 2002 Miss. LEXIS 314 (Miss. 2002).

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation § 90.

§ 61-3-69. Joint operations; agreement.

Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of Section 61-3-67. Each agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities, and privileges involved in the joint undertaking, the proportion of costs of operation, etc., to be borne by each public agency, and such other terms as are deemed necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned, prior to or at such time as said property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

HISTORY: Codes, 1942, § 7545-44; Laws, 1958, ch. 230, § 14.

JUDICIAL DECISIONS

1. Validity of agreements.

Circuit court erred in ruling a joint operations agreement between a Mississippi city and a Louisiana city and parish to create an airport was invalid since the city had not first created a separate corporate authority under either Miss. Code Ann. §§ 61-3-5 or 61-3-7; under Miss. Code Ann. §§ 61-3-67 and 61-3-69, no such intermediary was needed. Falco Lime, Inc. v. Mayor & Aldermen of Vicksburg, 836 So. 2d 711, 2002 Miss. LEXIS 314 (Miss. 2002).

§ 61-3-71. Joint operations; joint board generally.

Public agencies acting jointly pursuant to Section 61-3-67 shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend, from time to time, rules for its own procedure. The joint board shall have power, as agent of the participating public agencies, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, lease, regulate, protect, and police any airport or other air navigation facility, airport hazard or other airport property, real or personal, to be jointly acquired, controlled, and operated and to lease any property, real or personal, inside or outside the boundaries of an airport or airport site as it may deem necessary to carry out its duties. The board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility, airport hazard, or other airport property, real or personal, subject to the limitations of Section 61-3-73.

HISTORY: Codes, 1942, § 7545-44; Laws, 1958, ch. 230, § 14; Laws, 1985, ch. 447, § 2, eff from and after passage (approved March 29, 1985).

OPINIONS OF THE ATTORNEY GENERAL

Membership of Airport Board, owned jointly by City and County, may be increased from five (5) to seven (7) members provided agreement is lawfully and properly amended to reflect same; however, official acts of board can be taken only at official meeting with majority of members present. Seals, August 22, 1990, A.G. Op. #90-0629.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 89 et seq.

§ 61-3-73. Joint operations; limitation of powers of joint board.

The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding October 1st, or as otherwise specifically authorized by the constituent public agencies.

No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget, may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

Eminent domain proceedings may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common.

The joint board shall not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by Section 61-3-21.

Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by Section 61-3-23 shall become effective only upon approval of the governing bodies of the constituent public agencies. Upon such approval, the resolutions, rules, regulations, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations, or orders of each public agency would have in its own territory or jurisdiction.

HISTORY: Codes, 1942, § 7545-44; Laws, 1958, ch. 230, § 14.

§ 61-3-75. Joint operations; joint fund.

For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of Sections 61-3-67 through 61-3-75, a joint fund shall be created and maintained into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board, shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in Section 61-3-73.

HISTORY: Codes, 1942, § 7545-44; Laws, 1958, ch. 230, § 14.

§ 61-3-77. Exemption from taxation of airport property and income.

Any property in this state acquired by an authority for airport purposes pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control thereof, shall be exempt from taxation to the same extent as other property belonging to political subdivisions of this state.

HISTORY: Codes, 1942, § 7545-46; Laws, 1958, ch. 230, § 15.

Cross References — Items excluded from definition of "gross income" under Income Tax Law, see § 27-7-15.

Exemption of property belonging to political subdivisions from taxation, see § 27-31-1.

§ 61-3-79. Municipal cooperation with authority.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created or any municipality in which any of the property of the authority is located or which is contiguous to any property of the authority may, upon such terms, with or without consideration, as it may determine:

(a) Lend or donate money to the authority;

(b) Provide that all or a portion of the taxes or funds available or to become available to, or required by law to be used by, the municipality for airport purposes, be transferred or paid directly to the airport authority as such funds become available to the municipality;

(c) Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished onto or in connection with such airports or air navigation facilities;

(d) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority;

(e) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

(f) Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

(g) Enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

HISTORY: Codes, 1942, § 7545-47; Laws, 1958, ch. 230, § 17; Laws, 2012, ch. 450, § 4, eff from and after passage (approved Apr. 19, 2012).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 61-3-79 authorizes municipality which has created airport authority to lend or donate money to airport authority; therefore, city may, in its discretion, provide health insurance for employees of airport authority who in turn reimburse city for their premiums, provided insurer consents to inclusion of such nonmunicipal employees within its policy coverage. Primeaux, Apr. 7, 1993. A.G. Op. #93-0201.

Subsection (d) authorizes a municipality to lease property to an airport authority for use as airport property, but does not authorize a municipality to lease a street leading to the airport to the airport authority for purposes of maintenance or landscaping of the street by the airport authority. Faneca, Sept. 7, 2001, A.G. Op. #01-0459.

The mere act of conveyance of a parcel of municipal property to an airport authority does not, without further action, operate to close public streets on the property streets, or to convey the municipality's interest in those streets. If the facts do not support the presumption of abandonment, the mayor and city council must, pursuant to Section 21-37-7, enter an order closing the streets, or the portions that run through the property in question. Kohnke, Aug. 11, 2005, A.G. Op. 05-0383.

§ 61-3-81. Effect of chapter upon municipal airport zoning regulation.

Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

HISTORY: Codes, 1942, § 7545-49; Laws, 1958, ch. 230, § 19.

Cross References — Airport zoning law, see § 61-7-1 et seq.

RESEARCH REFERENCES

ALR.
Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

§ 61-3-83. Acquisition, etc., of airports, air navigation facilities, etc.; tort liability.

The acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any other powers granted in this chapter to authorities and other public agencies, to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

HISTORY: Codes, 1942, § 7545-45; Laws, 1958, ch. 230, § 15; Laws, 1983, ch. 528; Laws, 1984, ch. 495, § 31; reenacted and amended, Laws, 1985, ch. 474, § 30; Laws, 1986, ch. 438, § 43; Laws, 1987, ch. 483, § 44; Laws, 1988, ch. 442, § 41; Laws, 1989, ch. 537, § 39; Laws, 1990, ch. 518, § 40; Laws, 1991, ch. 618, § 40; Laws, 1992, ch. 491 § 42, eff from and after passage (approved May 12, 1992).

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Bailment and service contract.
3. Immunity.

1. In general.
The power to maintain and operate an airport being expressly vested in the municipality, such power would also include, as necessary and ancillary thereto, the power to contract with owners of airplanes to furnish them parking and tying-down facilities at the airport. City of Jackson v. Brummett, 224 Miss. 501, 80 So. 2d 827, 1955 Miss. LEXIS 514 (Miss. 1955). But see Anderson v. Jackson Municipal Airport Authority, 419 So. 2d 1010, 1982 Miss. LEXIS 2143 (Miss. 1982).

2. Bailment and service contract.
Where a municipality has the power to contract with owners of airplanes to furnish them parking and tying-down facilities at the airport, an agreement of the general manager of the airport to park and tie down plane was a valid bailment and service contract. City of Jackson v. Brummett, 224 Miss. 501, 80 So. 2d 827, 1955 Miss. LEXIS 514 (Miss. 1955). But

see Anderson v. Jackson Municipal Airport Authority, 419 So. 2d 1010, 1982 Miss. LEXIS 2143 (Miss. 1982).

3. Immunity.

Omission in Airport Authorities Law of any provision for immunity in tort continued in effect the rule that an Airport Authority has no immunity from suit arising out of propriety or corporate functions. Anderson v. Jackson Municipal Airport Authority, 419 So. 2d 1010, 1982 Miss. LEXIS 2143 (Miss. 1982).

RESEARCH REFERENCES

Law Reviews.

1982 Mississippi Supreme Court Review: Torts, Sovereign Immunity as a Defense to Tort Liability. 53 Miss. L. J. 171, March, 1983.

§ 61-3-85. Certain persons prohibited from deriving income from issuance of bonds.

No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds under Sections 61-3-35, 61-3-39, 61-3-41, 61-3-45, 61-3-51, or 61-3-53 contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

HISTORY: Laws, 1991, ch. 520, § 7, eff from and after passage (approved April 10, 1991).

CHAPTER 4.

MISSISSIPPI WAYPORT AUTHORITY ACT

Sec.
61-4-1 through 61-4-5. Repealed.
61-4-7. Repealed.
61-4-9 through 61-4-13. Repealed.

§§ 61-4-1 through 61-4-5. Repealed.

Repealed by Laws of 2017, ch. 404, § 8, effective July 1, 2017.

§ 61-4-1. [Laws, 1989, ch. 535, § 1, eff from and after passage (approved April 17, 1989).]

§ 61-4-3. [Laws, 1989, ch. 535, § 2, eff from and after passage (approved April 17, 1989).]

§ 61-4-5. [Laws, 1989, ch. 535, § 3, eff from and after passage (approved April 17, 1989).]

Editor's Notes — Former § 61-4-1 provided the short title for former Chapter 4, Title 61.

Former § 61-4-3 provided Legislative findings and declarations regarding the creation of the Mississippi Wayport Authority.

Former § 61-4-5 provided definitions of terms used in former Chapter 4, Title 61.

§ 61-4-7. Repealed.

Repealed by Laws of 2017, ch. 402, § 13, effective July 1, 2017.

§ 61-4-7. [Laws, 1989, ch. 535, § 4, eff from and after passage (approved April 17, 1989).]

Editor's Notes — Former § 61-4-7 established the Mississippi Wayport Authority and a Mississippi Wayport Authority Advisory Council.

§§ 61-4-9 through 61-4-13. Repealed.

Repealed by Laws of 2017, ch. 404, § 8 effective July 1, 2017.

§ 61-4-9. [Laws, 1989, ch. 535, § 5, eff from and after passage (approved April 17, 1989).]

§ 61-4-11. [Laws, 1989, ch. 535, § 6, eff from and after passage (approved April 17, 1989).]

§ 61-4-13. [Laws, 1989, ch. 535, § 7, eff from and after passage (approved April 17, 1989).]

Editor's Notes — Former § 61-4-9 related to the submission of a siting proposal for the project.

Former § 61-4-11 enumerated general powers of the Mississippi Wayport Authority.

Former § 61-4-13 related to the construction of former Chapter 4, Title 61.

CHAPTER 5.

ACQUISITION, DISPOSITION AND SUPPORT OF AIRPORT FACILITIES

Municipal Airport Law. 61-5-1
Support of Airport Facilities for State University and Colleges. 61-5-71
Lease of Facilities by Certain Municipalities. 61-5-91

MUNICIPAL AIRPORT LAW

Sec.
61-5-1. Short title.
61-5-3. Definitions.
61-5-5. General powers of municipalities as to establishment, acquisition, operation, etc., of airports and air navigation facilities.
61-5-7. Exercise of power of eminent domain.
61-5-9. Disposal of airport property.
61-5-11. Operation and use privileges; exemption from taxation.
61-5-13. Promulgation, etc., of ordinances, resolutions, rules, regulations and orders; enforcement.
61-5-15. Acceptance, etc., of federal and state aid; designation of agent.
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61-5-35. Joint operations; agreement.
61-5-37. Joint operations; joint board generally.
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61-5-43. Exemption from taxation of airport property and income.
61-5-45. Effect of law upon municipal airport zoning regulation.
61-5-47. Acquisition, etc. of airports, air navigation facilities, etc.; tort liability.
61-5-49. Interpretation and construction.

§ 61-5-1. Short title.

Sections 61-5-1 through 61-5-49 may be cited as the "Municipal Airport Law."

HISTORY: Codes, 1942, § 7545-23; Laws, 1958, ch. 513, § 23.

Cross References — Airport authorities law, see §§ 61-3-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Development authorities or commissions created under §§ 59-9-1 et seq. and §§ 59-11-1 et seq. do not have the powers or authorities granted by the Municipal

Airport Law, §§ 61-5-1 et seq. Genin, Jan. 9, 2004, A.G. Op. 03-0494.

RESEARCH REFERENCES

Law Reviews.

1982 Mississippi Supreme Court Review: Torts, Sovereign Immunity as a Defense to Tort Liability. 53 Miss. L. J. 171, March 1983.

§ 61-5-3. Definitions.

As used in the Municipal Airport Law, unless the text otherwise requires:

(a) "Airport" means any area of land or water which is used, or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights of way, or for other appropriate purposes, including buffer areas and areas for airport compatible development, together with all buildings and facilities located thereon.

(b) "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(c) "Air navigation facility" means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(d) "Joint airport board" shall mean a joint airport board created pursuant to Section 61-5-35.

(e) "Municipal airport board" shall mean a municipal airport board created pursuant to Section 61-5-25.

(f) "Municipality" means any county, city, village, town, supervisors district or supervisors districts of this state. "Municipal" means pertaining to a municipality as herein defined.

(g) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

HISTORY: Codes, 1942, § 7545-01; Laws, 1958, ch. 513, § 1; Laws, 2004, ch. 335, § 2, eff from and after passage (approved Apr. 13, 2004).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (a), (d), and (e). The word "take-off" has been changed to "taking off" in (a), and the word "section" has been changed to "Section" in (d) and (e). The Joint Committee ratified the corrections at its July 8, 2004 meeting.

RESEARCH REFERENCES

ALR.
Liability of United States for negligence of air traffic controller. 46 A.L.R. Fed. 24.

Am. Jur.
8A Am. Jur. 2d, Aviation § 1.

CJS.
2A C.J.S., Aeronautics and Aerospace §§ 3 et seq.

§ 61-5-5. General powers of municipalities as to establishment, acquisition, operation, etc., of airports and air navigation facilities.

Every municipality is authorized, out of any appropriations or other moneys made available for such purposes, to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the territorial limits of such municipality including the construction, installation, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers, and the purchase and sale of supplies, goods and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airport or to permit the removal, elimination, obstruction marking or obstruction lighting of airport hazards or to prevent the establishment of airport hazards.

The municipality may by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire existing airports and air navigation facilities. However, it shall not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency without the consent of such municipality or public agency.

All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

HISTORY: Codes, 1942, § 7545-02; Laws, 1958, ch. 513, § 2.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last paragraph. The word "co-ordinated" was changed to "coordinated." The Joint Committee ratified the correction at its May 20, 1998 meeting.

Cross References — General jurisdiction and powers of counties, see § 19-3-41.
General powers of municipalities, see § 21-17-1.
Approval of airport sites and issuance of certificates of approval, see § 61-1-31.
Acquisition of airport by county, see § 61-5-73.
Acquisition of airport by municipality, see § 61-5-75.

Lease of municipal airport facilities to private concerns in certain municipalities, see § 61-5-91.

OPINIONS OF THE ATTORNEY GENERAL

As a city is authorized under this section to continue operations of a municipal airport, it is also authorized, pursuant to § 61-5-15, to accept and receive federal and state monies for any proper airport purposes. Thomas, Mar. 11, 2004, A.G. Op. 04-0094.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 89 et seq.

§ 61-5-7. Exercise of power of eminent domain.

In the acquisition of property by eminent domain proceedings authorized by the Municipal Airport Law, the municipality shall proceed in the manner provided by Chapter 27 of Title 11, Mississippi Code of 1972, and as elsewhere provided by law. For the purpose of making surveys and examinations relative to any eminent domain proceedings, it shall be lawful to enter upon the land, doing no unnecessary damage. Notwithstanding the provisions of any other statute or other law, the municipality may take possession of any property to be acquired by eminent domain proceedings at any time after the commencement of such proceedings upon a specific finding by the municipality of the public necessity for the immediate acquisition of the property pursuant to Section 11-27-81 et seq., and compliance with all provisions of Section 11-27-81 et seq., including the provisions for making a deposit. The municipality shall not be precluded from abandoning such proceedings at any time prior to final order and decree of the court having jurisdiction of such proceedings. The municipality shall be liable to the owner of the property for any damage done to the property during possession thereof by the municipality.

HISTORY: Codes, 1942, § 7545-03; Laws, 1958, ch. 513, § 3; Laws, 1996, ch. 404, § 6, eff from and after July 1, 1996.

Cross References — Exercise of power of eminent domain under airport authorities law, see § 61-3-17.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 88 et seq.

§ 61-5-9. Disposal of airport property.

Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to Section 61-5-15, every municipality may by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to the Municipal Airport Law. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state, or provisions of the charter of the municipality, governing the disposition of other property of the municipality, except that in the case of disposal to another municipality or agency of the state or federal government for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality.

HISTORY: Codes, 1942, § 7545-04; Laws, 1958, ch. 513, § 4.

Cross References — Power of county to dispose of its real property, see § 19-7-3.
Power of municipality to dispose of its real property, see § 21-17-1.
Support of university or college airport by certain municipalities, see § 21-19-59.
Disposal of airport property under airport authorities law, see § 61-3-19.

JUDICIAL DECISIONS

1. Tax exemption.

Under Miss. Code Ann. § 61-5-11, a municipality may lease airport property only for the statutorily listed purposes and the attendant tax exemption is automatic from the inception of the lease; Miss. Code Ann. § 61-5-9 enables a municipality to lease airport property, and Miss. Code Ann. § 61-5-11 provides the mechanism for doing so, but nothing suggests that a municipality can lease airport land outside the parameters established by § 61-5-11. G4, LLC v. Pearl River Cty. Bd. of Supervisors, 289 So. 3d 283, 2020 Miss. LEXIS 32 (Miss. 2020).

§ 61-5-11. Operation and use privileges; exemption from taxation.

(1) In operating an airport or air navigation facility owned, leased or controlled by a municipality, such municipality may, except as may be limited by the terms and conditions of any grant, loan or agreement pursuant to Section 61-5-15, enter into contracts, leases and other arrangements for a term not exceeding fifty (50) years with any persons:

(a) Granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof, or space therein for commercial purposes; or

(b) Conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility; or

(c) Making available services to be furnished by the municipality or its agents at such airport or air navigation facility.

In each case the municipality may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

(2) Except as may be limited by the terms and conditions of any grant,

loan or agreement pursuant to Section 61-5-15, a municipality may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed fifty (50) years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality. However, no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases or other arrangements in connection with the operation of the airport which the municipality might not have undertaken under subsection (1) of this section.

(3) All contracts, leases and other arrangements entered into pursuant to this section are deemed to serve a public and governmental purpose as a matter of public necessity; therefore, all such contracts, leases and other arrangements, and all structures, improvements and other facilities erected, installed, constructed or located in connection therewith on an airport or air navigation facility owned or controlled by a municipality, or any portion or facility thereof or space therein, shall be free and exempt from all state, county and municipal ad valorem taxes on real property and personal property for so long as may otherwise be lawful, and the charges, rentals and fees received by a municipality in connection with such contracts, leases and other arrangements shall be deemed to be in lieu of said taxes.

HISTORY: Codes, 1942, § 7545-05; Laws, 1958, ch. 513, § 5; Laws, 1992, ch. 464, § 2; Laws, 2007, ch. 540, § 2; Laws, 2008, ch. 352, § 2, eff from and after passage (approved Mar. 26, 2008).

Cross References — Operation and use privileges under airport authorities law, see § 61-3-21.

JUDICIAL DECISIONS

1. Exemption.

Taxpayer was entitled to the automatic tax exemption in the statute because it had entered into a lease under the statute, and it also provided unrebutted evidence to the county board of supervisors that the property was being used for commercial purposes. G4, LLC v. Pearl River Cty. Bd. of Supervisors, 289 So. 3d 283, 2020 Miss. LEXIS 32 (Miss. 2020).

Under Miss. Code Ann. § 61-5-11, a municipality may lease airport property only for the statutorily listed purposes, and the attendant tax exemption is automatic from the inception of the lease; at the crux of both Miss. Code Ann. §§ 61-3-21 and 61-5-11 are ad valorem tax exemptions applicable to airport leases, the statutes contain identically worded tax exemptions, and both statutes have identical requirements for what qualifies as a tax exempt lease. G4, LLC v. Pearl River Cty. Bd. of Supervisors, 289 So. 3d 283, 2020 Miss. LEXIS 32 (Miss. 2020).

Under Miss. Code Ann. § 61-5-11, a municipality may lease airport property only for the statutorily listed purposes and the attendant tax exemption is automatic from the inception of the lease; Miss. Code Ann. § 61-5-9 enables a municipality to lease airport property, and Miss. Code Ann. § 61-5-11 provides the mechanism for doing so, but nothing suggests that a municipality can lease airport land outside the parameters established by § 61-5-11. G4, LLC v. Pearl River Cty. Bd. of Supervisors, 289 So. 3d 283, 2020 Miss. LEXIS 32 (Miss. 2020).

Under the statute, a municipality may lease property only for those purposes listed in the statute, and the statutory tax exemption is self operating and automatic. G4, LLC v. Pearl River Cty. Bd. of Supervisors, 289 So. 3d 283, 2020 Miss. LEXIS 32 (Miss. 2020).

While the Legislature did amend the statute, the amendments do not change the supreme court's holding that the statutory exemption is automatic for leased property used for commercial purposes; the amendments merely narrowed what constitutes "airport related activity" going forward, and the holding that the statute creates an automatic exemption was undisturbed by the amendment. G4, LLC v. Pearl River Cty. Bd. of Supervisors, 289 So. 3d 283, 2020 Miss. LEXIS 32 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Leases of municipally owned airports which are operated as public airports, structures, improvements and other facilities constructed in connection with leases are exempt from state, county and municipal ad valorem taxes on real and personal property. Woods, August 5, 1992, A.G. Op. #92-0582.

Section 61-3-21 and Section 61-5-11 provide exemption from state, county and municipal taxes, including school taxes, for contracts, leases and other arrangements relating to such property when used in accordance with and for purposes stated in Section 61-3-21 and 61-5-11; leasehold interest in such property is also exempt from ad valorem taxes. Broome Aug. 30, 1993, A.G. Op. #93-0467.

Upon termination of employment, each school attendance officer's unused personal leave in excess of thirty days shall be counted as creditable service for the purposes of the retirement system. See Sections 25-11-103 and 25-11-109. Leggett, October 25, 1996, A.G. Op. #96-0505.

Assuming an Airport Board no longer exists, a city may, as set forth in the Municipal Airport Laws, and particularly pursuant to the provisions of Section 61-5-11, enter into a contract or lease agreement with a qualified individual to be the fixed base operator of the County Airport. However, if it is determined that the Airport Board still exists, the same type of contract or lease may be entered into by the Airport Board as set forth in 61-3-21(2). Peeples, October 25, 1996, A.G. Op. #96-0669.

Section 61-5-11 as authorizing a municipality to "lease the municipal airport to a private individual or corporation under terms granting the individual or corporation the privilege of operating the airport for profit." Peeples, October 25, 1996, A.G. Op. #96-0669.

Sections 61-3-21 and 61-5-11 clearly exempt from state, county, and municipal real and personal property ad valorem taxes any structures, improvements, and other facilities which are erected, installed, or located on that leasehold and in furtherance of these statutes. Mitchell, III, Apr. 19, 2002, A.G. Op. #02-0164.

Property which is utilized as an industrial park, even if it may be owned by a municipality or municipal airport authority, is not used in connection with the airport or air navigation facility and, therefore, the exemptions provided by §§ 61-3-21(3) and 61-5-11(3) are not be available to such property. Mitchell, III, Apr. 19, 2002, A.G. Op. #02-0164.

Where an airport is owned by a county port commission created pursuant to § 59-11-1, this section, applying to municipal airport authorities, could not be used to exempt from taxes leased property at the airport. Genin, Jan. 9, 2004, A.G. Op. 03-0584.

§ 61-5-13. Promulgation, etc., of ordinances, resolutions, rules, regulations and orders; enforcement.

A municipality, which has established or acquired or which may hereafter establish or acquire an airport or air navigation facility, is authorized to adopt, amend and repeal such reasonable ordinances, resolutions, rules, regulations and orders as it shall deem necessary for the management, government and use of such airport or air navigation facility under its control whether situated within or without the territorial limits of the municipality.

As for the enforcement thereof, the municipality, may, by ordinance or resolution, as may by law be appropriate, appoint airport guards or police, with full police powers, and fix penalties, within the limits prescribed by law, for the violation of the aforesaid ordinances, resolutions, rules, regulations and orders. Said penalties shall be enforced in the same manner in which penalties prescribed by other ordinances or resolutions of the municipality are enforced. To the extent that an airport or other air navigation facility controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall, subject to federal and state laws, rules and regulations, be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or occupation tax for operations thereon.

All ordinances, resolutions, rules, regulations or orders which are issued by the municipality shall be kept in substantial conformity with the laws of the state or any regulations promulgated or standards established pursuant thereto, and, as nearly as may be, with the federal laws governing aeronautics and the rules, regulations and standards duly issued thereunder.

HISTORY: Codes, 1942, § 7545-08; Laws, 1958, ch. 513, § 8.

RESEARCH REFERENCES

ALR.

Validity of municipal regulation of aircraft flight paths or altitudes. 36 A.L.R.3d 1314.

§ 61-5-15. Acceptance, etc., of federal and state aid; designation of agent.

Every municipality is authorized to accept, receive, receipt for, disburse and expend federal and state monies and other monies, public or private, made available by grant or loan or both to accomplish, in whole or in part, any of the purposes of the Municipal Airport Law. All federal monies accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the United States and as are consistent with state law. All state monies accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the state. All local government monies accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the local government. Unless otherwise prescribed by the agency from which such monies were received, the chief financial officer of the municipality shall on its behalf deposit all monies received pursuant to this section and shall keep them, in separate funds designated according to the purposes for which the monies were made available, in trust for such purposes.

Every municipality is authorized to designate the Mississippi Transportation Commission as its agent to accept, receive, receipt for, and disburse federal, state and local government monies and other monies, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of the Municipal Airport Law. Every municipality is authorized to designate such commission as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment or operation of any airport or other air navigation facility. Every municipality may enter into an agreement with the commission prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal monies accepted under this section by such commission shall be accepted and transferred or expended by the commission upon such terms and conditions as are prescribed by the United States. All monies received by such commission pursuant to this paragraph shall be deposited in the State Treasury, and unless otherwise prescribed by the agency from which such monies were received, shall be kept in separate funds designated according to the purposes for which the monies were made available, and held by the state in trust for such purposes.

HISTORY: Codes, 1942, § 7545-13; Laws, 1958, ch. 513, § 13; Laws, 1992, ch. 379, § 5; Laws, 1992, ch. 496, § 30, eff from and after July 1, 1992.

Cross References — Acceptance of federal and state aid under airport authorities law, see § 61-3-25.

OPINIONS OF THE ATTORNEY GENERAL

As a city is authorized under § 61-5-5 to continue operations of a municipal airport, it is also authorized, pursuant to this section, to accept and receive federal and state monies for any proper airport purposes. Thomas, Mar. 11, 2004, A.G. Op. 04-0094.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 92 et seq.

§ 61-5-17. Bond issues for financing facility costs.

The cost of planning and acquiring, establishing, developing, constructing, enlarging, improving, or equipping an airport or air navigation facility, or the site therefor, including buildings and other facilities incidental to the operation thereof, and the acquisition or elimination of airport hazards, may be paid for wholly or partly from the proceeds of the sale of bonds or notes of the municipality, as the governing body of the municipality shall determine. For such purposes a municipality may issue general or special obligation bonds, revenue bonds or other forms of bonds or notes, secured or unsecured, including refunding bonds, in the manner and within the limitations prescribed by the laws of this state or the charter of the municipality for the authorization and issuance of bonds or notes thereof for public purposes generally. Such bonds may be sold at public or private sale at not less than par and shall bear interest at a rate or rates as the municipality shall determine, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101 for general obligation bonds, or Section 75-17-103 for revenue bonds, as the case may be. Any bonds or notes issued by a municipality pursuant to this section which are payable, as to principal and interest, solely from the revenues of an airport or air navigation facility (and such bonds or notes shall so state on their face), shall not constitute a debt of such municipality within the meaning of any constitutional or statutory debt limitation or restriction. In any suit, action or proceeding involving the security, or the validity or enforceability, of any bond or note issued by a municipality, which bond or note states on its face that it was issued pursuant to the provision of this section and for a purpose or purposes authorized or accomplished by this section, such bond or note shall be conclusively deemed to have been issued pursuant to this section for such purpose or purposes.

HISTORY: Codes, 1942, § 7545-10; Laws, 1958, ch. 513, § 10; Laws, 1976, ch. 329; Laws, 1985, ch. 477, § 12, eff from and after passage (approved April 8, 1985).

Cross References — Issuance of bonds under airport authorities law, see §§ 61-3-27 et seq.

Municipalities authorized to issue general obligation bonds for airport facilities, see § 61-3-65.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Securities and Obligations §§ 1 et seq.

§ 61-5-19. Authority to contract or enter into joint use or similar agreements.

A municipality may enter into any contracts necessary to the execution of the powers granted it, and for the purposes provided by the Municipal Airport Law.

Without limiting the foregoing, a municipality may enter into joint use or similar agreements with any department or agency of the United States of America or the State of Mississippi, including any military department of the United States of America or the State of Mississippi, with respect to the use and operation of, or services at, any airport or other property of the municipality used in connection with an airport on the terms and conditions as the municipality may deem appropriate, including provisions limiting the liability of the United States of America or the State of Mississippi to the municipality if the municipality determines that the limitation of liability is reasonable, necessary and appropriate under the circumstances.

HISTORY: Codes, 1942, § 7545-14; Laws, 1958, ch. 513, § 14; Laws, 2012, ch. 450, § 5, eff from and after passage (approved Apr. 19, 2012).

§ 61-5-21. Incidental powers.

In addition to the general and special powers conferred by the Municipal Airport Law, every municipality is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers.

HISTORY: Codes, 1942, § 7545-18; Laws, 1958, ch. 513, § 18.

OPINIONS OF THE ATTORNEY GENERAL

Assuming an Airport Board no longer exists, a city may, as set forth in the Municipal Airport Laws, and particularly pursuant to the provisions of Section 61-5-11, enter into a contract or lease agreement with a qualified individual to be the fixed base operator of the County Airport. However, if it is determined that the Airport Board still exists, the same type of contract or lease may be entered into by the Airport Board as set forth in 61-3-21(2). Peeples, October 25, 1996, A.G. Op. #96-0669.

§ 61-5-23. Validation of prior acquisitions and actions.

Any acquisition of property made prior to April 21, 1958, within or without the limits of any municipality, for the purposes authorized by the Municipal Airport Law, and any other action taken prior to said date by a municipality in furtherance of such purposes, including, but not limited to the making of appropriations, the expenditure of money, the incurring of debts, the acceptance and disbursement of federal, state or other grants or loans, the issuance and payment of bonds and notes, the execution of leases and contracts, which acquisition or action would have been authorized had said law been in effect at the time of such acquisition or action, is hereby ratified and made valid. All bonds and notes issued prior to said date in furtherance of purposes authorized by said law and actions ratified by this section are confirmed as legal obligations of the municipality, and, without prejudice to the general powers granted to the municipality by said law, such municipality is hereby authorized to issue further bonds and notes for such purposes up to the limit fixed in the original authorization therefor, which bonds and notes shall be legal obligations in accordance with their terms.

HISTORY: Codes, 1942, § 7545-11; Laws, 1958, ch. 513, § 11.

§ 61-5-25. Delegation of municipal authority to airport board or other agency.

Any authority vested by the Municipal Airport Law in a municipality or in the governing body thereof, for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing of airports or other air navigation facilities established, owned or controlled, or to be established, owned or controlled by the municipality may be vested by resolution of the governing body of the municipality in an airport board, or other municipal agency, whose powers and duties shall be prescribed in the resolution. However, the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing shall be a responsibility of the municipality.

HISTORY: Codes, 1942, § 7545-07; Laws, 1958, ch. 513, § 7.

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to this section, a county board of supervisors may pass a resolution designating the county port and harbor commission as the airport board and prescribing its powers and duties with regard to the airport. Genin, Jan. 9, 2004, A.G. Op. 03-0494.

§ 61-5-27. Liens in favor of municipality.

To enforce the payment of any charges for repairs or improvements to or storage or care of, any personal property made or furnished by the municipality or its agents in connection with the operation of an airport or air navigation facility owned or operated by the municipality, the municipality shall have liens on such property, which shall be enforceable by the municipality as provided by law.

HISTORY: Codes, 1942, § 7545-06; Laws, 1958, ch. 513, § 6.

Cross References — Enforcement of liens generally, see §§ 85-7-141 et seq.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation § 33.

§ 61-5-29. Appropriation of funds; taxation.

The governing body of any municipality having power to appropriate and raise money, is hereby authorized to appropriate, and to raise by taxation or otherwise, sufficient moneys to carry out the provisions and purposes of the Municipal Airport Law.

HISTORY: Codes, 1942, § 7545-09; Laws, 1958, ch. 513, § 9.

Cross References — Constitutional requirement that provision be made to prevent municipal corporations from abusing taxing power, see Miss. Const. Art. 4, § 80.

Constitutional directive that provision be made whereby cities and towns may encourage enterprises of public utility by exempting property for such use from municipal taxation, see Miss. Const. Art. 7, § 192.

County finance and taxation generally, see §§ 19-9-1 et seq.
Municipal finance and taxation generally, see §§ 21-33-1 et seq.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 88 et seq.

§ 61-5-31. Disposition of airport revenues.

The revenues obtained by a municipality from the ownership, control or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, shall be deposited in a special fund to be designated the "________ Airport Fund," which revenues shall be appropriated solely to, and used by the municipality for, the purposes authorized by the Municipal Airport Law.

HISTORY: Codes, 1942, § 7545-12; Laws, 1958, ch. 513, § 12.

§ 61-5-33. Joint operations; authorization.

For the purposes of Sections 61-5-33 through 61-5-41, unless otherwise qualified, the term "public agency" includes municipality, as defined in Section 61-5-3, and any agency of the state government and of the United States. The term "governing body" means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality. All powers, privileges and authority granted to any municipality by the Municipal Airport Law may be exercised and enjoyed jointly with any public agency of this state, or of the United States to the extent that the laws of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the state government when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges and authority conferred by the Municipal Airport Law upon a municipality.

HISTORY: Codes, 1942, § 7545-15; Laws, 1958, ch. 513, § 15.

Cross References — Joint operations under airport authorities law, see §§ 61-3-67 et seq.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation § 89.

§ 61-5-35. Joint operations; agreement.

Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of Section 61-5-33. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each, and such other terms as are required by the provisions of Sections 61-5-33 through 61-5-41. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges jointly owned, prior to or upon said property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided in the Municipal Airport Law, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

HISTORY: Codes, 1942, § 7545-15; Laws, 1958, ch. 513, § 15.

OPINIONS OF THE ATTORNEY GENERAL

An interlocal agreement was not necessary in connection with the extension of an agreement between a city and a county for the operation of a public airport as the statute contained specific authority to enter the agreement. Bowman, Mar. 9, 2001, A.G. Op. #01-0078.

No specific limit exists on the length of an agreement between a city and a county for the operation of a public airport, but the agreement must specify its duration. Bowman, Mar. 9, 2001, A.G. Op. #01-0078.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

§ 61-5-37. Joint operations; joint board generally.

Public agencies acting jointly pursuant to Section 61-5-33 shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, lease, regulate, protect and police any airport or air navigation facility or airport hazard, or other airport property, real or personal, to be jointly acquired, controlled and operated and to lease any property, real or personal, inside or outside the boundaries of an airport or airport site as it may deem necessary to carry out its duties. Such board may exercise, on behalf of its constituent public agencies, all the powers of each with respect to such airport, air navigation facility or airport hazard, subject to the limitations of Section 61-5-39.

HISTORY: Codes, 1942, § 7545-15; Laws, 1958, ch. 513, § 15; Laws, 1985, ch. 447, § 3, eff from and after passage (approved March 29, 1985).

OPINIONS OF THE ATTORNEY GENERAL

Neither a city nor a county had authority to use their law enforcement personnel or policemen to enforce laws on a jointly operated airport located in another county, except in a rare situation of hot pursuit; however, the joint airport board was authorized to establish an airport police department, whose officers would be authorized to enforce the laws on airport property. Bowman, Mar. 9, 2001, A.G. Op. #01-0078.

A joint airport board may enter into an incentive-based contract with a consultant as long as the contract provisions are consistent with the following requirements (1) incentive payments are authorized by the original contract and were contemplated when bids or proposals are submitted, (2) predetermined objective standards are specified so that a determination can be made that an incentive payment has been earned and the amount of the payment can be determined, and (3) the amount of the payments do not exceed a specified maximum amount contained in the contract. Bowman, Nov. 14, 2005, A.G. Op. 05-0531.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 88 et seq.

§ 61-5-39. Joint operations; limitations of powers of joint board.

(1) The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies on or before the preceding December first.

(2) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(3) Eminent domain proceedings may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said

public agencies as tenants in common until conveyed by them to the joint board.

(4) The joint board shall not dispose of any airport, air navigation facility or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without such consent, enter into the contract, lease or other arrangements contemplated by Section 61-5-11.

(5) Any resolutions, rules, regulations or orders of the joint board dealing with subjects authorized by Section 61-5-13 shall become effective only upon approval of the governing bodies of the constituent public agencies. Upon such approval the resolutions, rules, regulations or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations or orders of each public agency would have in its own territory or jurisdiction.

HISTORY: Codes, 1942, § 7545-15; Laws, 1958, ch. 513, § 15.

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

§ 61-5-41. Joint operations; joint fund.

For the purposes of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of Sections 61-5-33 through 61-5-41, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any federal, state or other contributions or loans, and the revenues obtained from the joint ownership, control and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in Section 61-5-39.

HISTORY: Codes, 1942, § 7545-15; Laws, 1958, ch. 513, § 15.

§ 61-5-43. Exemption from taxation of airport property and income.

Any property in this state acquired by a municipality for airport purposes pursuant to the provisions of the Municipal Airport Law, and any income derived by such municipality from the ownership, operation or control thereof, shall be exempt from taxation to the same extent as other property belonging to political subdivisions of this state.

HISTORY: Codes, 1942, § 7545-17; Laws, 1958, ch. 513, § 17.

Cross References — Items excluded from definition of "gross income" under Income Tax Law, see § 27-7-15.

Exemption of property belonging to political subdivisions from taxation, see § 27-31-1.

§ 61-5-45. Effect of law upon municipal airport zoning regulation.

Nothing contained in the Municipal Airport Law shall be construed to limit any right, power or authority of a municipality to regulate airport hazards by zoning.

HISTORY: Codes, 1942, § 7545-19; Laws, 1958, ch. 513, § 19.

Cross References — Airport zoning law, see §§ 61-7-1 et seq.

RESEARCH REFERENCES

ALR.

Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

§ 61-5-47. Acquisition, etc. of airports, air navigation facilities, etc.; tort liability.

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities, the acquisition of any airport protection privileges, the acquisition, establishment, construction, enlargement, improvements, maintenance, equipment and operation of airports and other air navigation facilities by any municipality or municipalities of this state, separately or jointly, and the exercise of any other powers granted in the Municipal Airport Law to any airport board, joint board or authority are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. Such lands and other property and privileges acquired and used by the municipality in the manner and for the purposes enumerated in said law shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

HISTORY: Codes, 1942, § 7545-16; Laws, 1958, ch. 513, § 16; Laws, 1985, ch. 474, § 54; Laws, 1986, ch. 438, § 44; Laws, 1987, ch. 483, § 45; Laws, 1988, ch. 442, § 42; Laws, 1989, ch. 537, § 40; Laws, 1990, ch. 518, § 41; Laws, 1991, ch. 618, § 41; Laws, 1992, ch. 491 § 43, eff from and after passage (approved May 12, 1992).

JUDICIAL DECISIONS

1. Liability.

Amendment to the statute was part of an act that amended the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 through 11-46-23, and made conforming amendments to other statutes; it was clear that the provision that gave immunity to any airport board, joint board or authority was superceded by the adoption of the MTCA such that the airport authority could not escape liability by merely asserting that it was really an airport board. Spencer v. Greenwood/Leflore Airport Auth., 834 So. 2d 707, 2003 Miss. LEXIS 5 (Miss. 2003).

RESEARCH REFERENCES

Law Reviews.

1982 Mississippi Supreme Court Review: Torts, Sovereign Immunity as a Defense to Tort Liability. 53 Miss. L. J. 171, March, 1983.

§ 61-5-49. Interpretation and construction.

The Municipal Airport Law shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of the state and other states and of the government of the United States having to do with the subject of municipal airports.

HISTORY: Codes, 1942, § 7545-20; Laws, 1958, ch. 513, § 20.

SUPPORT OF AIRPORT FACILITIES FOR STATE UNIVERSITY AND COLLEGES

Sec.

61-5-71. Declaration of public policy; legislative intent.
61-5-73. Powers of counties.
61-5-75. Powers of municipalities.
61-5-77. Construction.

§ 61-5-71. Declaration of public policy; legislative intent.

It shall be the public policy of this state to encourage the construction, equipping, maintenance and operation of adequate transportation facilities, including airports, if needed, for use of the state university and the state supported four year colleges now or hereafter located in the state, as necessary in the operation and training program of such university and colleges and desirable for the use of the municipalities and areas in or near which such airports may be located as well as being helpful in the economic, industrial and business development of said counties. It is the intent of Sections 61-5-71 through 61-5-77 to provide means whereby the board of trustees of state institutions of higher learning, the state building commission and any and all other state agencies which have either constructed such airport facilities, or contemplate so doing, may obtain assistance and contributions of funds from any municipality in or near which any such college may be located and from the county in which any such airport facilities may be located. It is also the intent of said sections to authorize such municipalities and counties to borrow money and issue bonds, under their respective bond laws, to provide funds for the purpose of aiding and assisting in the acquisition of sites for such airports, construction of buildings, construction of runways and extension of runways and in constructing and equipping all facilities needed or desirable for such airports.

HISTORY: Codes, 1942, § 7536.5; Laws, 1957, Ex. Sess. ch. 13, § 1.

§ 61-5-73. Powers of counties.

The boards of supervisors of the several counties of the state are authorized, in their discretion, to acquire by condemnation, donation, lease or purchase land to be used as an airport or landing place for airplanes. They may erect such buildings thereon as they may deem necessary for such purpose, and equip and maintain such airport.

The boards of supervisors of the several counties of the state, wherein the university or other state supported four year colleges now or hereafter in existence, are or shall be located, are authorized, in their discretion, to assist the board of trustees of state institutions of higher learning, the state building commission or any other state agency by contributing county funds to be used in the acquisition of a site for an airport, erecting suitable buildings, building or extending runways and equipping, maintaining and operating an airport, which shall be available for the use of said university or colleges, as the case may be, and for the general public.

HISTORY: Codes, 1930, § 3571; 1942, § 7537; Laws, 1928, ch. 63; Laws, 1957, Ex. Sess. ch. 13, § 2.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph. The word “board” was changed to “boards.” The Joint Committee ratified the correction at its December 3, 1996 meeting.

Cross References — General jurisdiction and powers of counties, see § 19-3-41.

Approval of airport sites and issuance of certificates of such approval, see § 61-1-31.

Airport authorities law, see §§ 61-3-1 et seq.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 88 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Eminent Domain, Form 31.1 (Complaint, petition, or declaration — For condemnation — By state agency — For state transportation facility).

§ 61-5-75. Powers of municipalities.

The governing authorities of any municipality are authorized, in their discretion, to exercise all the powers conferred on boards of supervisors with reference to acquiring land to be used as an airport or landing place for airplanes, and erect suitable buildings thereon, and equip and maintain such airport. They may acquire airports or landing places already established. Such airport or landing place may be situated beyond the limits of such municipality. The governing authorities of a municipality may lease, or sublease, or contract the maintenance and operation of, any airport or landing place for airplanes to the United States of America, or any department or agency thereof, or to any person, firm, association, or corporation, for the purpose of training aviators and for other legal purposes. The county wherein such airport may be situated is hereby authorized to make such contribution to the cost of acquiring the necessary land for such airport, the placing of same in suitable condition, and the equipping and maintenance thereof, as the board of supervisors of such county and the governing body of such municipality may mutually agree upon.

The governing authorities of the several municipalities of the state in or near which the state university or a state supported four year college, now or hereafter in existence, are or shall be located, are authorized, in their discretion, to assist the board of trustees of state institutions of higher learning, the state building commission or any other state agency by contributing municipal funds to be used in the acquisition of a site for an airport, erecting suitable buildings and building or extending runways, equipping, maintaining and operating an airport, which shall be available for the use of said university or colleges, as the case may be, and for the general public.

Any such municipality which offers assistance in the acquisition of a site for constructing suitable buildings, building or extending runways or maintaining and operating such airports for the university or other state supported colleges, as the case may be, may or may not be in the county in which the university or the state supported four year college is located, provided the airport is not more than ten miles from said municipality.

HISTORY: Codes, 1930, § 3572; 1942, §§ 7538, 7538.1; Laws, 1928, ch. 63; Laws, 1942, ch. 174; Laws, 1946, ch. 231, § 1; Laws, 1957, Ex. Sess. ch. 13, §§ 3, 7.

Cross References — General powers of municipalities, see § 21-17-1.

Support of university or college airport by certain municipalities, see § 21-19-59.

Issuance of municipal bonds for support of university or college airport, see § 21-33-301.

Approval of airport sites and issuance of certificates of such approval by department of economic and community development, see § 61-1-31.

Airport authorities law, see §§ 61-3-1 et seq.

Lease of municipal airport facilities to private concerns in certain municipalities, see § 61-5-91.

JUDICIAL DECISIONS

1. In general.

Under statutes which give the city the power to maintain an airport, the word "maintain," in the connection in which it was used by the legislature, includes the power to operate the field and the two words "maintain" and "operate" have been held to be synonymous as applied to operating an airport. Brummett v. Jackson, 211 Miss. 116, 51 So. 2d 52, 1951 Miss.

LEXIS 338 (Miss. 1951). But see Anderson v. Jackson Municipal Airport Authority, 419 So. 2d 1010, 1982 Miss. LEXIS 2143 (Miss. 1982).

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 88 et seq.
9 Am. Jur. Pl & Pr Forms (Rev), Eminent Domain, Form 31.1 (Complaint, petition, or declaration — For condemnation — By state agency — For state transportation facility).

§ 61-5-77. Construction.

Sections 61-5-71 through 61-5-75 are remedial, are entitled to a liberal construction, and are supplemental and in addition to all other laws on the subject. In event, however, said sections are in conflict with any other law, they shall take precedence, in order to accomplish the purpose of development for which they are expressly written.

HISTORY: Codes, 1942, § 7538.2; Laws, 1957, Ex. Sess. ch. 13, § 8.

Editor's Notes — Section 31-11-1 provides that the term "state building commission" or "building commission" wherever it appears in the laws of Mississippi shall be construed to mean the governor's office of general services.

LEASE OF FACILITIES BY CERTAIN MUNICIPALITIES

Sec.	
61-5-91.	Lease of airport facilities to private concerns.

§ 61-5-91. Lease of airport facilities to private concerns.

Any municipality having a population, according to the last federal census, in excess of ten thousand inhabitants is authorized to lease any part or all of its airport grounds and improvements to one or more private concerns for not longer than twenty-five years by awarding such contract competitively after due notice of such public letting as public contracts are made. The city may lease a part of the land included in its airport either with or without the improvements thereon, and may require the lessee to erect improvements on such land and maintain the same at its expense or the city may in the discretion of its governing authorities make such contract thereasto as may appear most advantageous and profitable to it. Any such lease contract shall be made only for the purpose of the expansion and development of such airport and its use in furtherance of the promotion of private and commercial aviation therein. The city is authorized to construct and maintain suitable airstrips and landing and take-off areas at its expense in connection with such lease thereof, and it may lease all or any part of its airport buildings and hangars to federal agencies (such as weather bureau and C. A. A.) and private and commercial airlines using such airport as a depot, but the rental thereon shall never be less than the current charges for the upkeep and maintenance thereof and the period of such contract shall not exceed twenty-five years. It is the intent and purpose of this section to vest in such municipalities within the stated class full and plenary power and authority to develop and expand its airport facilities by allowing private concerns to erect improvements thereon at their expense for repairing and servicing private and commercial airplanes and for the sale and servicing of airplanes thereat so as to assure and encourage such continued use of said property and the development thereto at the least possible expense to the public.

HISTORY: Codes, 1942, § 7540-01; Laws, 1946, ch. 313, § 1.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation § 98.

3 Am. Jur. Legal Forms 2d, Aviation §§ 34:81 et seq.

CHAPTER 7.

AIRPORT ZONING

Sec.

61-7-1.	Short title.
61-7-3.	Definitions.
61-7-5.	Airport hazards declared contrary to public interest.
61-7-7.	Power to adopt airport zoning regulations.
61-7-9.	Relationship of airport regulations to comprehensive zoning ordinance.
61-7-11.	Procedure for adoption of zoning regulations.
61-7-13.	Airport zoning commission.
61-7-15.	Requirements of airport zoning regulations generally.
61-7-17.	Permits and variances.
61-7-19.	Administration of airport zoning regulations.
61-7-21.	Board of adjustment.
61-7-23.	Appeals of administrative decisions to board of adjustment.
61-7-25.	Judicial review of administrative decisions.
61-7-27.	Penalties for violations of chapter and rules, regulations, orders, etc.; enforcement.
61-7-29.	Acquisition of air rights.

§ 61-7-1. Short title.

This chapter shall be known and may be cited as the "Airport Zoning Law."

HISTORY: Codes, 1942, § 7544-15; Laws, 1950, ch. 284, § 15, eff from and after passage (approved March 21, 1950).

Cross References — Zoning, planning and subdivision regulation, see §§ 17-1-1 et seq.

§ 61-7-3. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Airport" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes, including airports and airport facilities owned, operated or controlled by the United States Government for use by military aircraft. However, none of the provisions of this chapter shall be construed as granting to a political subdivision any power or authority that is prohibited by or that is in conflict with any law of the United States or any rule or regulation of any department, board, commission or agency of the United States.

(2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at any airport or is otherwise hazardous to such landing or taking-off of aircraft.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(4) "Political subdivision" means any municipality, city, town, village or county.

(5) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including but without limitation, buildings, towers, smokestacks and overhead transmission lines.

(7) "Tree" means any object of natural growth.

HISTORY: Codes, 1942, § 7544-01; Laws, 1950, ch. 284, § 1; Laws, 1994, ch. 301, § 1, eff from and after passage (approved February 14, 1994).

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation § 1.

CJS.
2A C.J.S., Aeronautics and Aerospace §§ 3 et seq.

§ 61-7-5. Airport hazards declared contrary to public interest.

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or making and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interest therein.

HISTORY: Codes, 1942, § 7544-02; Laws, 1950, ch. 284, § 2, eff from and after passage (approved March 21, 1950).

RESEARCH REFERENCES

ALR.
Airport operations or flight of aircraft as nuisance. 79 A.L.R.3d 253.

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 86, 87.

Law Reviews.
1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March, 1979.

§ 61-7-7. Power to adopt airport zoning regulations.

(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard within its territorial limits may adopt, administer, and enforce under the police power and in the manner and upon the conditions prescribed in this chapter, airport zoning regulations for such airport hazard area. Such regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision or by any state institution and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, within or without the state, the political subdivision owning and controlling the airport or within which the airport owned and controlled by a state institution is located and the political subdivisions within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board. Said board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard in question as that vested by subsection (1) in the political subdivisions within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and, in addition, a chairman elected by a majority of the members so appointed.

HISTORY: Codes, 1942, § 7544-03; Laws, 1950, ch. 284, § 3; Laws, 1956, ch. 362.

Cross References — Zoning, planning and subdivision regulation generally, see Chapter 1 of Title 17.

JUDICIAL DECISIONS

1. In general.
Substantial compliance with this section is sufficient. Citizens for Equal Prop. Rights v. Board of Supervisors, 730 So. 2d 1141, 1999 Miss. LEXIS 17 (Miss. 1999).

The statute does not contemplate that every existing airport zoning hazard in the affected area be identified before airport zoning regulations may be adopted. Citizens for Equal Prop. Rights v. Board of Supervisors, 730 So. 2d 1141, 1999 Miss. LEXIS 17 (Miss. 1999).

RESEARCH REFERENCES

ALR.
Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 61-7-9. Relationship of airport regulations to comprehensive zoning ordinance.

In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

HISTORY: Codes, 1942, § 7544-04; Laws, 1950, ch. 284, § 4, eff from and after passage (approved March 21, 1950).

§ 61-7-11. Procedure for adoption of zoning regulations.

No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in subsection (2) of Section 61-7-7, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard to be zoned.

HISTORY: Codes, 1942, § 7544-05; Laws, 1950, ch. 284, § 5, eff from and after passage (approved March 21, 1950).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Zoning and Planning §§ 499 et seq.

CJS.

101A C.J.S., Zoning and Land Planning § 12.

§ 61-7-13. Airport zoning commission.

Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

HISTORY: Codes, 1942, § 7544-05; Laws, 1950, ch. 284, § 5, eff from and after passage (approved March 21, 1950).

JUDICIAL DECISIONS

1. In general.

This section is not clear as to the form of the required reports; thus, where the zoning commission made recommendations and held several public hearings, it complied with the intent of this section. Citizens for Equal Prop. Rights v. Board of Supervisors, 730 So. 2d 1141, 1999 Miss. LEXIS 17 (Miss. 1999).

RESEARCH REFERENCES

Am. Jur.

82 Am. Jur. 2d, Zoning and Planning § 388.

CJS.

101A C.J.S., Zoning and Land Planning §§ 9, 28.

§ 61-7-15. Requirements of airport zoning regulations generally.

All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirements or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

No airport zoning regulations adopted under this chapter shall require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in subsection (3) of Section 61-7-17.

HISTORY: Codes, 1942, § 7544-06; Laws, 1950, ch. 284, § 6, eff from and after passage (approved March 21, 1950).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Injunction.

1. In general.

A city and a municipal airport authority which, by enactment of an authorized valid zoning ordinance, had assumed, for the protection of an instrument approach zone and a transition surface zone, to prohibit the owner of property located approximately 3500 feet from the main airport runway from using or encroaching upon air space more than 50 feet above his land, had so interfered with and restricted the owner's use and enjoyment of his private property for public use as to constitute a taking or damaging thereof without due compensation. Ballard v. Maraman, 191 So. 2d 126, 1966 Miss. LEXIS 1203 (Miss. 1966).

2. Injunction.

A bill for an injunction to require the owner of land located approximately 3500 feet from the main airport runway to top or remove trees which had been permitted to extend into a restricted area more than 50 feet above the surface and established by an otherwise valid zoning order as an instrument approach zone and transition surface zone, was dismissed on the ground that the zoning restriction constituted an unlawful taking or damage of private property for public use without due compensation. Ballard v. Maraman, 191 So. 2d 126, 1966 Miss. LEXIS 1203 (Miss. 1966).

RESEARCH REFERENCES

ALR.

Change in area or location of nonconforming use as violation of zoning ordinance. 56 A.L.R.4th 769.

Alteration, extension, reconstruction, or repair of nonconforming structure or structure devoted to nonconforming use as violation of zoning ordinance. 63 A.L.R.4th 275.

Am. Jur.

83 Am. Jur. 2d, Zoning and Planning §§ 388, 499 et seq.

26 Am. Jur. Proof of Facts 3d 467, Zoning – Circumstances Warranting Expansion of a Nonconforming Use.

§ 61-7-17. Permits and variances.

(1) Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming structure or tree or non-conforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

(2) Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or

enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

HISTORY: Codes, 1942, § 7544-07; Laws, 1950, ch. 284, § 7, eff from and after passage (approved March 21, 1950).

Cross References — Zoning changes generally, see § 17-1-17.

RESEARCH REFERENCES

ALR.
Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

Am. Jur.
82 Am. Jur. 2d, Zoning and Planning §§ 97 et seq.

CJS.
101A C.J.S., Zoning and Land Planning §§ 252 et seq.

Law Reviews.
Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 61-7-19. Administration of airport zoning regulations.

All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this section shall include that of hearing and deciding all permits under subsection (1) of Section 61-7-17. Such agency shall not have or exercise any of the powers delegated in this chapter to the board of adjustment.

HISTORY: Codes, 1942, § 7544-09; Laws, 1950, ch. 284, § 9, eff from and after passage (approved March 21, 1950).

RESEARCH REFERENCES

CJS.
101A C.J.S., Zoning and Land Planning §§ 211-218.

§ 61-7-21. Board of adjustment.

(1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to be composed of not less than three members, to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in Section 61-7-23.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under subsection (2) of section 61-7-17.

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination, of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinances or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. The board shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

HISTORY: Codes, 1942, § 7544-10; Laws, 1950, ch. 284, § 10, eff from and after passage (approved March 21, 1950).

RESEARCH REFERENCES

Am. Jur.
82 Am. Jur. 2d, Zoning and Planning §§ 649 et seq.

CJS.
101A C.J.S., Zoning and Land Planning §§ 219 et seq.

§ 61-7-23. Appeals of administrative decisions to board of adjustment.

Any person aggrieved by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the board on notice to the agency from which the appeal is taken and on due cause shown.

The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The board may, in conformity with the provisions of this chapter, reverse, affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

HISTORY: Codes, 1942, § 7544-08; Laws, 1950, ch. 284, § 8, eff from and after passage (approved March 21, 1950).

RESEARCH REFERENCES

ALR.

Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

Am. Jur.

82 Am. Jur. 2d, Zoning and Planning §§ 649 et seq., 928.

CJS.

101A C.J.S., Zoning and Land Planning §§ 219 et seq.

§ 61-7-25. Judicial review of administrative decisions.

Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is illegal, may present to the circuit court of the county wherein such decision was rendered a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board.

Upon presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact of the board, if supported by substantial evidence, shall be accepted by the court as conclusive. No objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

Cost shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

HISTORY: Codes, 1942, § 7544-11; Laws, 1950, ch. 284, § 11, eff from and after passage (approved March 21, 1950).

RESEARCH REFERENCES

ALR.

Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

Am. Jur.	**CJS.**
82 Am. Jur. 2d, Zoning and Planning §§ 915 et seq.	101A C.J.S., Zoning and Land Planning §§ 335 et seq.

§ 61-7-27. Penalties for violations of chapter and rules, regulations, orders, etc.; enforcement.

Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than 30 days or by both such fine and imprisonment. Each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement. The court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

HISTORY: Codes, 1942, § 7544-12; Laws, 1950, ch. 284, § 12, eff from and after passage (approved March 21, 1950).

Cross References — Penalties for zoning ordinance violations, see § 17-1-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
82 Am. Jur. 2d, Zoning and Planning §§ 979 et seq.	101A C.J.S., Zoning and Land Planning §§ 391, 392, 394 et seq.

§ 61-7-29. Acquisition of air rights.

In any case in which: (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, then the political subdivision within which the property or non-conforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, aviation easement, or other estate or interest in the property or non-conforming structure or use in question as may be necessary to effectuate the purposes of this chapter.

HISTORY: Codes, 1942, § 7544-13; Laws, 1950, ch. 284, § 13, eff from and after passage (approved March 21, 1950).

Cross References — Eminent domain generally, see § 11-27-1 et seq.
Power of county to acquire real estate, see § 19-7-1.
Power of municipality to acquire real estate, see § 21-17-1.

JUDICIAL DECISIONS

1. In general.

A city and a municipal airport authority which, by enactment of an authorized valid zoning ordinance, had assumed, for the protection of an instrument approach zone and a transition surface zone, to prohibit the owner of property located approximately 3500 feet from the main airport runway from using or encroaching upon air space more than 50 feet above his land, had so interfered with and restricted the owner's use and enjoyment of his private property for public use as to constitute a taking or damaging thereof without due compensation. Ballard v. Maraman, 191 So. 2d 126, 1966 Miss. LEXIS 1203 (Miss. 1966).

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 2 et seq.

CJS.

2A C.J.S., Aeronautics and Aerospace §§ 1, 2.

CHAPTER 9.

INCORPORATION OF AIRPORT INTO CORPORATE BOUNDARIES OF MUNICIPALITY

Sec.

61-9-1. Authorization and procedure generally.
61-9-3. Contents and effect of ordinance providing for incorporation.
61-9-5. Incorporation of airport property located in another county.
61-9-7. Judicial review.
61-9-9. Construction and application of chapter.

§ 61-9-1. Authorization and procedure generally.

Any incorporated municipality of this state which has heretofore or may hereafter establish or acquire an airport or air navigational facility any part of which is situated within ten miles of the corporate limits of such municipality, may, by ordinance adopted for such purpose, incorporate the properties constituting such airport or air navigational facility into its corporate boundaries. Such incorporation may be accomplished by the adoption of an ordinance as provided in this chapter, regardless of whether or not such airport or air navigational facility is located within the same county as that of the incorporated municipality and irrespective of whether or not it is adjacent or contiguous thereto.

HISTORY: Codes, 1942, § 7545-71; Laws, 1964, ch. 495, § 1, eff from and after passage (approved May 22, 1964).

Cross References — Enlargement of municipal boundaries by adding adjacent unincorporated territory, see §§ 21-1-27 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sale of alcoholic beverages.

1. In general.

Subsection 3 of Code 1942, § 7545-71 under which all laws and ordinances of a city were made applicable to a noncontiguous municipal airport was repealed by implication by Code 1942, § 10265-36 to the extent that it conflicted with the provisions of the Local Option Beverage Control Law, so although the city was located in a county where the sale of alcoholic beverages was legal this did not authorize the sale of such beverages at the municipal airport which was located in a "dry" county. Jackson Municipal Airport Authority v. Shivers, 206 So. 2d 190, 1968 Miss. LEXIS 1553 (Miss. 1968).

2. Sale of alcoholic beverages.

Where, acting under this section [Code 1942, § 7545-71], a city adopted an ordinance incorporating within its territory the entire area embraced in a noncontiguous municipal airport, and at the time of the adoption of the ordinance the sale of light wines and beer was legal within the city under the provisions of Code 1942, § 10207, the fact that the airport was located in a "dry" county did not prevent the sale of such beverages at the airport. McDonald v. Koostra, 196 So. 2d 884, 1967 Miss. LEXIS 1498 (Miss. 1967).

RESEARCH REFERENCES

Am. Jur.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 35-37, 44, 62 et seq.

CJS.
62 C.J.S., Municipal Corporations §§ 45-51.

§ 61-9-3. Contents and effect of ordinance providing for incorporation.

Any ordinance to incorporate properties constituting an airport or air navigational facility into the corporate boundaries of a municipality shall include the following provisions and shall be effective as follows:

(1) The ordinance shall accurately describe the metes and bounds of the property of the airport or air navigational facility to be incorporated; only such portions of property constituting the airport or air navigational facility as shall be owned by the municipality and properties in which easements have been acquired by it for streets, public utilities and public roads and used in connection therewith shall be subject to such incorporation.

(2) The ordinance shall provide that it shall not become operative until publication thereof shall have been made once each week for three (3) consecutive weeks in a newspaper, or newspapers, published or having a general circulation in the county or counties where both the municipality and such airport or air navigational facility shall be located.

(3) Subject only to the provisions hereof, and irrespective of the geographic location of the airport or air navigational facility in a county or judicial district other than the county or judicial district within which the principal office of the municipality is located, any such ordinance shall become effective upon the effective date fixed therein. On and after such effective date and on or after March 10, 1976, all laws, municipal ordinances, and local options effective in the municipality as a result of municipal, judicial district and county options exercised in the municipality, judicial district or the county within which the principal office of the municipality is located, and all other laws, orders, codes and resolutions of and applicable to the municipality availing or having availed itself of the provisions hereof as well as those of the board of supervisors of the county in which the principal office of the municipality is located, shall be applicable to such airport or air navigational facility; provided, however, that no permit for the sale of any alcoholic beverage as defined in Section 67-1-5, except an on-premises retailer's permit as authorized by Section 67-1-51(c), shall be issued for use at such airport or air navigational facility. Venue for the trial of all offenses against such laws and ordinances shall be in the county in which the airport or air navigational facility is located.

(4) Nothing in this section shall be construed to restrict the county wherein the airport or air navigational facility is geographically located from levying and collecting state, county and school district ad valorem taxes on taxable properties situated thereat; and nothing in this section shall operate

to impair or restrict the detachment of territory from a municipal separate school district and the annexation thereof to a county school district under Section 37-7-609, whether occurring prior to or subsequent to March 10, 1976.

(5) Provided, however, that this chapter shall apply only to municipalities having a population of one hundred thousand (100,000) or more.

HISTORY: Codes, 1942, § 7545-71; Laws, 1964, ch. 495, § 1; Laws, 1976, ch. 310; Laws, 2013, ch. 341, § 1, eff from and after July 1, 2013.

Editor's Notes — Section 37-7-609, referred to in (4), was repealed by Laws of 1986, ch. 492, § 47, effective from and after July 1, 1987.

RESEARCH REFERENCES

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 35-37, 44, 62 et seq.

CJS.

62 C.J.S., Municipal Corporations §§ 54 et seq., 67.

§ 61-9-5. Incorporation of airport property located in another county.

If any municipality shall, pursuant to the authority of this chapter, incorporate into its corporate boundaries property situated in a county other than the county in which the principal office of the municipality is located, it shall not thereafter extend its boundaries into such other county, without, in addition to complying with all existing laws of this state governing or relating to the extension of corporate boundaries of municipalities, first obtaining the consent and approval of the board of supervisors of such county into which it desires to extend its corporate boundaries.

HISTORY: Codes, 1942, § 7545-74; Laws, 1964, ch. 495, § 4, eff from and after passage (approved May 22, 1964).

JUDICIAL DECISIONS

1. In general.

Under Code 1942 § 7545-74, the City of Jackson is prohibited by law from annexing the Pearl area except with the consent of the board of supervisors of Rankin County. Boling v. City of Jackson, 279 So. 2d 590 (Miss. 1973).

§ 61-9-7. Judicial review.

Any person aggrieved by any municipal ordinance adopted pursuant to the provisions of this chapter shall be entitled to an appeal to the circuit court of the county in which the principal office of the municipality is located in the manner provided for appeals from judgments or decisions of municipal authorities as set forth in Section 11-51-75, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 7545-73; Laws, 1964, ch. 495, § 3, eff from and after passage (approved May 22, 1964).

RESEARCH REFERENCES

Am. Jur.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 419-422.

§ 61-9-9. Construction and application of chapter.

The provisions of this chapter shall be independent of, and in addition to, all existing laws of this state governing the extension or enlargement of municipal corporate boundaries and shall apply to all municipalities, whether any such municipality be operating under the code charter, under the commission form of government, or under a special charter, and regardless of whether a different or special procedure be provided by any such special charter, or by any other laws of the state.

HISTORY: Codes, 1942, § 7545-72; Laws, 1964, ch. 495, § 2, eff from and after passage (approved May 22, 1964).

CHAPTER 11.

OPERATION OF AIRCRAFT; CERTIFICATION AND LICENSING OF PILOTS AND AIRCRAFT

Sec.

61-11-1. Operation of aircraft in careless manner, while under influence of intoxicating liquor, etc.; hunting or spotting game for purpose of hunting from aircraft.

61-11-3. Operation of aircraft without federal certificate, permit, etc.

61-11-5. Possession, display, etc., of federal certificate, permit, etc.

61-11-7. Penalties for violations of §§ 61-11-1 to 61-11-5.

§ 61-11-1. Operation of aircraft in careless manner, while under influence of intoxicating liquor, etc.; hunting or spotting game for purpose of hunting from aircraft.

(1) It shall be unlawful for any person to operate an aircraft in the air or on the ground or water, while under the influence of intoxicating liquor, narcotics or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless or reckless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.

(2) It shall be unlawful for any person or persons to pursue, chase, hunt, take or kill any wild game or waterfowl from an aircraft, or to spot and communicate the location of any wild game from an aircraft to another for the purpose of hunting, killing or taking such wild game. Before a person may be arrested for a violation of the provision of this subsection that prohibits the spotting and communication of the location of wild game from an aircraft for the purpose of hunting, killing or taking such wild game, the arresting officer must have reasonable grounds and probable cause to believe that a violation has occurred. Any person convicted under this subsection (2) shall be subject to the penalties provided in Section 61-11-7, and shall also forfeit all hunting, trapping and fishing privileges for a period of not less than twelve (12) months from the date of conviction.

HISTORY: Codes, 1942, § 7536-12; Laws, 1948, ch. 189, § 9; Laws, 1992, ch. 542, § 1, eff from and after July 1, 1992.

Cross References — Confiscation of aircraft for assisting in harvesting of redfish, see § 49-15-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Persons and entities liable.
3. Negligence.
4. Instructions.

1. In general.

No federal statute or constitutional provision and no state constitutional provision is contravened by this statute. Hays v. Morgan, 221 F.2d 481, 1955 U.S. App. LEXIS 3533 (5th Cir. Miss. 1955).

2. Persons and entities liable.

Owner of an aircraft was not held vicariously liable for the negligence of a nonemployee pilot who borrowed the aircraft for the benefit of his personal friends. Malone v. Capital Corr. Res., Inc., 2001 Miss. LEXIS 203 (Miss. Aug. 23, 2001), op. withdrawn, sub. op., 808 So. 2d 963, 2002 Miss. LEXIS 49 (Miss. 2002).

In an action to recover for personal injuries sustained by the plaintiff when he was struck by an airplane used to spray cotton on a farm, owners of the airplane were liable, where they reserved the right to direct when and how the work of spraying cotton was to be carried on, and where there was no lease of any kind of airplane to pilot and where the bailment was at the will of the owners. Hays v. Morgan, 221 F.2d 481, 1955 U.S. App. LEXIS 3533 (5th Cir. Miss. 1955).

3. Negligence.

Trial court properly granted a limited liability company (LLC) summary judgment in wrongful death beneficiaries' action because the LLC could act only through a pilot since he was its sole member, and the beneficiaries were barred from recovering for the pilot's negligence; if the pilot had survived the crash, he would have been unable to recover from the LLC for his own negligence, and the beneficiaries stood in the pilot's shoes and also could not recover for his negligence. Howarth v. M&H Ventures, LLC, 237 So. 3d 107, 2017 Miss. LEXIS 429 (Miss. 2017).

The operator of an airplane may be found to have been negligent where his take-off from a pasture in which he had landed caused the cattle grazing therein to stampede. Brunt v. Chicago Mill & Lumber Co., 243 Miss. 607, 139 So. 2d 380, 1962 Miss. LEXIS 384 (Miss. 1962).

4. Instructions.

In an unsuccessful suit against an airplane company and a pilot for the wrongful death of a flagman who was struck and killed by an airplane spraying herbicides while he attempted to guide it beneath transmission wires, the trial court properly denied plaintiff's request for a peremptory instruction where the uncontradicted testimony at trial was that the pilot had kept the best lookout possible under the circumstances; while violation of this section is negligence per se, no showing was made that the statute was indeed violated. Cannon v. Jones, 377 So. 2d 1055, 1979 Miss. LEXIS 2520 (Miss. 1979).

RESEARCH REFERENCES

ALR.

Aviation law: liability of air carrier for injury to, or death of, passenger on charter flight. 41 A.L.R.3d 455.

Validity, construction, and application of state criminal statute prohibiting reckless operation of aircraft. 89 A.L.R.3d 893.

Res ipsa loquitur in aviation accidents. 25 A.L.R.4th 1237.

Strict liability, in absence of statute, for injury or damage occurring on the ground caused by ascent, descent, or flight of aircraft. 73 A.L.R.4th 416.

Liability Arising from Air Shows or Other Aerial Exhibitions for Injury and Death of Spectators and Participants. 88 A.L.R.6th 679.

Limitation of liability of air carrier for personal injury or death. 91 A.L.R. Fed. 547.

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 208 et seq.

4 Am. Jur. Pl & Pr Forms (Rev), Aviation, Form 272.1 (complaint arising out of crash of aircraft into residence during storm).

CJS.

2A C.J.S., Aeronautics and Aerospace §§ 272-276.

Practice References.

Aviation Accident Law (Matthew Bender).

§ 61-11-3. Operation of aircraft without federal certificate, permit, etc.

It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States. It shall be unlawful for any person to engage in aeronautics as an airman in the state unless he has an appropriate effective airman certificate, permit, rating or license issued by the United States authorizing him to engage in the particular class of aeronautics in which he is engaged, if such certificate, permit, rating or license is required by the United States.

HISTORY: Codes, 1942, § 7536-13; Laws, 1948, ch. 189, § 10(1), eff from and after July 1, 1948.

Cross References — License fees of pilots and aircraft under agriculture aviation licensing law, see § 69-21-119.

RESEARCH REFERENCES

ALR.

Validity of Federal Aviation Administration regulations (14 CFR §§ 67.13, 67.15, 67.17) prescribing standards for issuance of medical certificates to airmen. 59 A.L.R. Fed. 682.

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 48-50.

CJS.

2A C.J.S., Aeronautics and Aerospace §§ 38, 39.

§ 61-11-5. Possession, display, etc., of federal certificate, permit, etc.

When a certificate, permit, rating or license is required for an airman by the United States, it shall be kept in his personal possession when he is operating within the state and shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the Mississippi Department of Transportation authorized pursuant to law to enforce the aeronautics laws, or any official, manager or person in charge of any airport upon which the airman shall land, or upon the reasonable request of any other person.

Where a certificate, permit or license is required by the United States for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state, shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors, and shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the Mississippi Department of Transportation authorized pursuant to law to enforce the aeronautics laws, or any official, manager, or person in charge of any airport upon which the aircraft shall land, or upon the reasonable request of any person.

HISTORY: Codes, 1942, § 7536-14; Laws, 1948, ch. 189, § 10(2); Laws, 1992, ch. 496, § 31, eff from and after July 1, 1992.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Presumptions.

1. In general.

Violation of statute by operating a motor vehicle without a license does not raise an inference of negligence. Myrick v. Holifield, 240 Miss. 106, 126 So. 2d 508, 1961 Miss. LEXIS 436 (Miss. 1961).

2. Presumptions.

In the absence of information to the contrary, it is legally presumed that a motorist has a driver's license. Gause v. State, 203 Miss. 377, 34 So. 2d 729, 1948 Miss. LEXIS 282 (Miss. 1948).

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 48-50.

CJS.

2A C.J.S., Aeronautics and Aerospace §§ 38, 39.

§ 61-11-7. Penalties for violations of §§ 61-11-1 to 61-11-5.

Any person violating any of the provisions of Sections 61-11-1 through 61-11-5, Mississippi Code of 1972, shall be punishable by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment of more than six (6) months, or both.

For any violation of the provisions of such sections, in addition to, or in lieu of, the penalties provided by the first paragraph of this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, the court, in its discretion, may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court. Upon a plea of guilty or conviction hereunder in any case involving a registrant, under the provisions of such sections, the court shall cause a notation of such plea or conviction and of the sentence imposed to be marked upon the pilot certificate or other evidence of pilot registration or receipt provided by the Mississippi Department of Transportation. The court shall cause a copy of its order or sentence to be forwarded to the commission, the cost of furnishing same to be added as a part of cost in such cause. In no event shall this paragraph be construed as warrant for the court or any other agency or person to take away, impound, hold or mark any federal airman or aircraft certificate, permit, rating or license, or to take away, impound or hold any state registration certificate or other evidence of such registration.

HISTORY: Codes, 1942, § 7536-23; Laws, 1948, ch. 189, § 18; Laws, 1956, ch. 361; Laws, 1992, ch. 496, § 32, eff from and after July 1, 1992.

Cross References — Penalties provided for in this section applicable to violations involving reckless operation of aircraft or hunting from aircraft, see § 61-11-1.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state criminal statute prohibiting reckless operation of aircraft. 89 A.L.R.3d 893.

CHAPTER 13.

AIRCRAFT FOR USE OF GOVERNOR, STATE DEPARTMENTS AND AGENCIES

Sec.
61-13-1. Purchase, lease, operation, etc., of nonmilitary aircraft for state use.
61-13-3. Employment of pilots and technical and administrative personnel.
61-13-5. Laws governing purchase of aircraft; Department of Finance and Administration exempt from requirements of Section 27-104-7(2)(f) when purchasing aircraft maintenance, parts, equipment and/or services; selection process of maintenance facility.
61-13-7. Assignment of aircraft to state departments, agencies, etc.; recordkeeping requirements.
61-13-9. Documentation of use of airplanes.
61-13-11. Allocation of cost of operation of airplanes to state departments, institutions or agencies.
61-13-13. Purchase of insurance.
61-13-15. Sale of surplus airplanes and disposition of proceeds; sale of airplanes purchased prior to July 1, 1986.
61-13-17. Payment of costs and expenses; disposition of proceeds of sale of aircraft.
61-13-19. Penalties for violations of chapter.
61-13-21. Transfer of certain powers of Adjutant General to Department of Finance and Administration.
61-13-23. Maintenance and pilot proficiency requirements; maintenance of policy manual and records of aircraft operations; availability of aircraft for emergency use.
61-13-25. Powers and duties of Department of Finance and Administration.

§ 61-13-1. Purchase, lease, operation, etc., of nonmilitary aircraft for state use.

The Department of Finance and Administration of the State of Mississippi, is authorized and empowered to purchase or lease, operate and maintain nonmilitary aircraft for use by the Governor's Office, state departments, agencies, boards and commissions, the Legislature, its officers and employees, all under the general direction of the Department of Finance and Administration.

HISTORY: Codes, 1942, § 8533-01; Laws, 1966, ch. 562, § 1; Laws, 1968, ch. 484, § 1; Laws, 1986, ch. 500, § 46; Laws, 1989, ch. 502, § 1; Laws, 1989, ch. 544, § 29, eff from and after July 1, 1989.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.
State military department, see § 33-3-3.
Adjutant general, see § 33-3-7.

§ 61-13-3. Employment of pilots and technical and administrative personnel.

The Executive Director of the Department of Finance and Administration is authorized to employ pilots and such other technical and administrative personnel as he deems necessary in carrying out the provisions of this chapter, and to fix the compensation of all such employees, subject to the guidelines established by the State Personnel Board.

HISTORY: Codes, 1942, § 8533-02; Laws, 1966, ch. 562, § 2; Laws, 1968, ch. 484, § 2; Laws, 1989, ch. 544, § 30, eff from and after July 1, 1989.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.

General powers and duties of adjutant general, see § 33-3-11.

§ 61-13-5. Laws governing purchase of aircraft; Department of Finance and Administration exempt from requirements of Section 27-104-7(2)(f) when purchasing aircraft maintenance, parts, equipment and/or services; selection process of maintenance facility

The purchase of aircraft to be used for the purpose in this chapter shall be in compliance with Sections 31-7-1 through 31-7-21. The Department of Finance and Administration is hereby exempt from the requirements of Section 27-104-7(2)(f) when procuring aircraft maintenance, parts, equipment and/or services. It shall be the responsibility of the Executive Director of the Department of Finance and Administration to ensure commercially reasonable practices, including competitive pricing and superb industry maintenance standards. The selection process of maintenance facility shall consider: their capability and experience, the scope of work, the cost, and the length of time the aircraft will be out of service. The process undertaken by the Department of Finance and Administration for procurement of the maintenance facility shall be reported to the Public Procurement Review Board.

HISTORY: Codes, 1942, § 8533-03; Laws, 1966, ch. 562, § 3, eff from and after passage (approved June 17, 1966); Laws, 2019, ch. 329, § 1, eff from and after passage (approved March 15, 2019).

§ 61-13-7. Assignment of aircraft to state departments, agencies, etc.; recordkeeping requirements.

This chapter shall not be construed so as to prevent the Department of Finance and Administration from permanently assigning aircraft to departments, institutions, commissions or agencies thereof. However, all airplanes owned by the State of Mississippi or by any department, institution, bureau, commission or agency thereof, with the exception of planes owned and operated by the various educational institutions of this state for educational purposes, shall be subject to the record-keeping provisions of this chapter and, in the discretion of the Department of Finance and Administration, such aircraft may be subject to the provisions of Section 61-13-15(2).

HISTORY: Codes, 1942, § 8533-04; Laws, 1966, ch. 562, § 4; Laws, 1986, ch. 500, § 47; Laws, 1989, ch. 544, § 31, eff from and after July 1, 1989.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.

Aircraft excluded by this section not subject to maintenance and pilot proficiency requirements, see § 61-13-23.

§ 61-13-9. Documentation of use of airplanes.

The Department of Finance and Administration shall require of all planes operated under the provisions of this chapter an accounting on forms furnished by the Department of Finance and Administration, which shall show among other things the trips made, names of passengers carried, date of beginning and termination of trips, miles traveled, stops made, fuel consumed and cost per hour of operation.

HISTORY: Codes, 1942, § 8533-05; Laws, 1966, ch. 562, § 5; Laws, 1984, ch. 488, § 261; Laws, 1989, ch. 544, § 32, eff from and after July 1, 1989.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.

§ 61-13-11. Allocation of cost of operation of airplanes to state departments, institutions or agencies.

Whenever the Department of Finance and Administration under the direction of the Governor's office makes an airplane or airplanes available to some department, institution or agency of the State of Mississippi, the actual cost for the operation thereof during the time the aforesaid airplane is so assigned shall be charged to and paid for by the aforesaid department, institution or agency into the special fund set up in Section 61-13-17 for the operation of such airplanes, except planes used by the Governor and Lieutenant Governor.

HISTORY: Codes, 1942, § 8533-06; Laws, 1966, ch. 562, § 6; Laws, 1989, ch. 502, § 2; Laws, 1989, ch. 544, § 33, eff from and after July 1, 1989.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.

§ 61-13-13. Purchase of insurance.

The Department of Finance and Administration is hereby authorized to obtain adequate comprehensive insurance coverage for each of such airplanes as may be purchased or operated under the provisions of this chapter and any other insurance deemed necessary by the Executive Director of the Department of Finance and Administration. The purchase of such insurance shall be on a bid basis in accordance with generally accepted practice for insurance purchases by departments of state government.

HISTORY: Codes, 1942, § 8533-07; Laws, 1966, ch. 562, § 7; Laws, 1984, ch. 495, § 29; reenacted and amended, Laws, 1985, ch. 474, § 20; Laws, 1986, ch. 438, § 45; Laws, 1987, ch. 483, § 46; Laws, 1988, ch. 442, § 43; Laws, 1989, ch. 537,

§ 41; Laws, 1989, ch. 544, § 34; Laws, 1990, ch. 518, § 42; Laws, 1991, ch. 618, § 42; Laws, 1992, ch. 491, § 44; Laws, 2013, ch. 547, § 1, eff from and after July 1, 2013.

§ 61-13-15. Sale of surplus airplanes and disposition of proceeds; sale of airplanes purchased prior to July 1, 1986.

(1) Any airplane purchased or operated under the provisions of this chapter which becomes surplus to the needs of the state may be sold by the Department of Finance and Administration upon the receipt of not less than three (3) sealed bids after three (3) public advertisements inviting such bids in some newspaper published in the State of Mississippi and having general circulation therein. The Department of Finance and Administration, may reject any or all bids and readvertise, in its discretion. The sums derived from such sale shall be placed in the special fund as established by Section 61-13-17 for the operation of airplanes purchased and operated under the provisions of this chapter.

(2) The Department of Finance and Administration shall proceed to sell one or more of the aircraft purchased prior to July 1, 1986, pursuant to this chapter. The sale of such aircraft pursuant to this subsection shall be subject to the bid requirements of subsection (1). It is the intent of the Legislature that the sale of such aircraft shall be timed to produce the maximum revenues at sale.

HISTORY: Codes, 1942, § 8533-08; Laws, 1966, ch. 562, § 8; Laws, 1984, ch. 488, § 262; Laws, 1986, ch. 500, § 48; Laws, 1989, ch. 544, § 35, eff from and after July 1, 1989.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.

Discretion of department of finance and administration to subject agency aircraft to provisions of this section, see § 61-13-7.

Provision that certain monies allocated for the operation, maintenance, and repair of aircraft disposed of pursuant to this section shall be transferred to the State General Fund, see § 61-13-17.

Planes owned and operated by various educational institutions subject to provisions of this section, see § 61-13-21.

§ 61-13-17. Payment of costs and expenses; disposition of proceeds of sale of aircraft.

There is hereby created a special fund in the State Treasury out of which all costs and expenses incurred pursuant to this chapter shall be paid. All salaries, allocations and charges for the cost of operating, repairing and servicing the airplanes shall be paid from this fund. The Legislature shall appropriate the necessary funds to carry out the purposes of this chapter. The Department of Finance and Administration shall disburse over his signature all funds expended for carrying out the provisions of this chapter.

Any monies in such fund which have been allocated for the operation, maintenance and repair of an aircraft which has been disposed of pursuant to Section 61-13-15 shall be transferred to the State General Fund.

HISTORY: Codes, 1942, § 8533-09; Laws, 1966, ch. 562, § 9; Laws, 1986, ch. 500, § 49; Laws, 1989, ch. 544, § 36, eff from and after July 1, 1989.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.

Proceeds from charges for use of aircraft to be deposited into fund created in this section, see § 61-13-11.

Provision that sums derived from the sale of surplus airplanes shall be placed in the special fund established by this section, see § 61-13-15.

§ 61-13-19. Penalties for violations of chapter.

Any violation of the provisions of this chapter shall be punishable upon conviction by a fine of not to exceed five hundred dollars ($500.00).

HISTORY: Codes, 1942, § 8533-12; Laws, 1966, ch. 562, § 12, eff from and after passage (approved June 17, 1966).

§ 61-13-21. Transfer of certain powers of Adjutant General to Department of Finance and Administration.

It is the intent of "the Mississippi Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544]" to transfer the powers of the Adjutant General, Military Department of the State of Mississippi, with regard to the purchase or lease, operation and maintenance of nonmilitary aircraft for use by the departments, agencies, boards and commissions, the Legislature, its officers and employees to the Department of Finance and Administration. The executive director may assign to appropriate divisions such powers and duties as he deems appropriate to carry out the lawful functions of the department.

The transfer shall include, but is not limited to, all aircraft, support equipment, tools, vehicles, hangars and other items associated with the operation of state aircraft. The affected agencies shall transfer complete title of the transferred items.

The provisions of "the Mississippi Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544]" do not apply to military aircraft activities or to aircraft owned and operated by the various educational institutions for educational purposes, except that the planes owned and operated by the various educational institutions may be subject to the provisions of Section 61-13-15(2), Mississippi Code of 1972, at the discretion of the Department of Finance and Administration.

HISTORY: Laws, 1989, ch. 544, § 26, eff from and after July 1, 1989.

Editor's Notes — For a complete distribution of sections of the Mississippi Executive Reorganization Act of 1989 (Laws, 1989, ch. 544) see Allocation of Acts Table in the Statutory Tables Volume.

Cross References — General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Creation and organization of Department of Finance and Administration, see § 27-104-101.

§ 61-13-23. Maintenance and pilot proficiency requirements; maintenance of policy manual and records of aircraft operations; availability of aircraft for emergency use.

Upon July 1, 1989, all state aircraft activity, except those excluded by Section 61-13-7, Mississippi Code of 1972, shall adhere to the maintenance and pilot proficiency requirements as established by either the Federal Aviation Administration or the Department of Finance and Administration. A policy manual and records of all aircraft operations shall be maintained by the department. All state aircraft shall be on call for emergency use, as determined by the Executive Director of the Department of Finance and Administration.

HISTORY: Laws, 1989, ch. 544, § 27, eff from and after July 1, 1989.

§ 61-13-25. Powers and duties of Department of Finance and Administration.

The Department of Finance and Administration shall have the following powers, duties and functions with regard to state aircraft operations:

(a) To administer, maintain and schedule a comprehensive program of management of state aviation activities;

(b) To maintain a record of all flights made by state aircraft;

(c) To initiate and maintain a pilot proficiency training program;

(d) To establish priorities concerning the use of state aircraft;

(e) To prepare and maintain a policy/procedure manual in order to standardize all state aviation activities;

(f) To reassign state aircraft, when needed, that are under the control of the department. The agency to which the aircraft is assigned shall pay the operating cost.

HISTORY: Laws, 1989, ch. 544, § 28, eff from and after July 1, 1989.

Cross References — General powers and duties of Department of Finance and Administration, see § 27-104-103.

CHAPTER 15.

REGISTRATION OF AIRCRAFT

Sec.

61-15-1. Duties of State Tax Commission generally.
61-15-3. "Aircraft" defined.
61-15-5. Exemptions from registration.
61-15-7. Filing of application for registration; fees; form and contents of applications; exemptions from registration requirement; exemption license; penalties for failure to register.
61-15-9. Maintenance of records on registered aircraft; assignment of license number; registration stickers; replacement of certificate of registration; renewal of registration; sale of registration certificate; transfer of registration.
61-15-11. Registration schedule and rates; applicability of laws relating to sales tax; prorata registration and taxation; listing of aircraft on personal property rolls.
61-15-13. Promulgation of rules and regulations by State Tax Commission.

§ 61-15-1. Duties of State Tax Commission generally.

It shall be the duty of the State Tax Commission to promulgate any additional rules and regulations and designate forms and procedures for the implementation of this chapter.

HISTORY: Laws, 1982, ch. 469, § 1; reenacted, Laws, 1984, ch. 516, § 1; reenacted, Laws, 1988, ch. 531, § 1; Laws, 1994, ch. 434, § 1, eff from and after January 1, 1995.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Provision that tax assessors shall include on the personal property tax roll a list of aircraft which have not been registered as required under this chapter, see §§ 27-35-15 and 27-35-23.

Form and content of an application for registration, see § 61-15-7.

Authority of state tax commission to promulgate rules and regulations, see § 61-15-13.

§ 61-15-3. "Aircraft" defined.

Notwithstanding any other definition thereof in any other statute, the term "aircraft" as used herein shall, for license and registration purposes, include any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air or airspace, manufactured by mass production or individually constructed or assembled, which are subject to registration with the Federal Aviation Administration.

HISTORY: Laws, 1982, ch. 469, § 2; reenacted, Laws, 1984, ch. 516, § 2; reenacted, Laws, 1988, ch. 531, § 2, eff from and after January 1, 1989.

Cross References — Provision that tax assessors shall include on the personal property tax roll a list of aircraft which have not been registered as required under this chapter, see §§ 27-35-15 and 27-35-23.

§ 61-15-5. Exemptions from registration.

The following aircraft are exempt from provisions of this chapter:

(a) Aircraft manufactured within the state under an FAA approved type certificate which are owned and in the physical possession of the manufacturers as provided in subsection (4) of Section 61-15-7 of this chapter;

(b) Aircraft owned by charitable organizations and used solely for the furtherance of charitable purposes;

(c) Aircraft belonging to nonresidents of this state and registered and taxed in another state;

(d) Aircraft of the federal government, any agency thereof, any territory or possession thereof, any state government or agency or political subdivision thereof, and any aircraft of the Civil Air Patrol used solely in transaction of official business by a unit of the Civil Air Patrol;

(e) Aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft;

(f) Aircraft not currently licensed or holding a current airworthiness certificate by the Federal Aviation Administration;

(g) Aircraft taxable under the provisions of Sections 27-35-701 through 27-35-711; and

(h) Aircraft used for commercial fishing purposes and aircraft used primarily for agricultural purposes which are subject to the regulation of the Agricultural Aviation Board of the State of Mississippi pursuant to the Agricultural Aviation Licensing Law of 1966, Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, and to which are issued current licenses by the Agricultural Aviation Board.

HISTORY: Laws, 1982, ch. 469, § 3; reenacted, Laws, 1984, ch. 516, § 3; reenacted, Laws, 1988, ch. 531, § 3, eff from and after January 1, 1989.

Cross References — Exemption of registered aircraft from ad valorem taxes, see §§ 27-31-27 and 61-15-7.

Provision that tax assessors shall include on the personal property tax roll a list of aircraft which have not been registered as required under this chapter, see §§ 27-35-15 and 27-35-23.

§ 61-15-7. Filing of application for registration; fees; form and contents of applications; exemptions from registration requirement; exemption license; penalties for failure to register.

(1) Except as otherwise provided in this chapter, every owner or person in charge of an aircraft which shall be based and operated on or from any airport of any type in this state shall file an application for a certificate of registration by mail or otherwise with the tax collector of the county in which the aircraft

is based for each such aircraft. The State Tax Commission shall prescribe the form of such applications and shall make them available to the county tax collectors. The county tax collector may charge a fee not to exceed Two Dollars ($2.00) per application mailed to registrants to defray the expense of the mailing process; and such fee shall be in addition to the registration fee and shall be deposited to the credit of the county general fund. The registration shall be valid for the calendar year. The application for a certificate of registration shall contain:

(a) A description of each aircraft to be registered including the name of the manufacturer, aircraft registration number, type and maximum certificated gross weight; and

(b) The name and address of the owner of such aircraft and the county and municipality where aircraft is based.

The State Tax Commission may prescribe the form of renewal applications after the initial year of registration and shall make them available to county tax collectors.

(2)(a) All dealers in the sale of aircraft shall be exempt from registration requirements upon purchase of an "exemption license" from the tax collector of the county in which the business is located, cost of which shall be Two Hundred Fifty Dollars ($250.00). This exemption shall not apply to dealers' personal aircraft.

(b) Dealers' "sales aircraft" shall be exempt from payment of ad valorem taxes and registration fees as provided in Section 61-15-11 upon proof satisfactory to the tax collector of the county in which the business is located, that each particular aircraft is used for delivery and demonstration purposes only.

(3) All manufacturers of aircraft shall be exempt from registration requirements of inventory upon purchase of an "exemption license" from the tax collector of the county in which the business is located, the cost of which shall be Two Hundred Fifty Dollars ($250.00).

(4) Aircraft owners shall purchase the required certificate of registration within sixty (60) days after the date of purchase of the aircraft. Aircraft owners failing or refusing to purchase the required certificate of registration within the prescribed time shall be guilty of violating the provisions of this chapter, and shall be liable for the amount of the registration fee, plus a penalty as follows:

(a) For all aircraft registered pursuant to Section 61-15-11 with a maximum certified gross weight of three thousand six hundred (3,600) pounds or less, a penalty of Fifty Dollars ($50.00);

(b) For all aircraft registered pursuant to Section 61-15-11 with a maximum certified gross weight of more than three thousand six hundred (3,600) pounds but not more than ten thousand (10,000) pounds, a penalty of One Hundred Fifty Dollars ($150.00);

(c) For all other aircraft registered hereunder, a penalty of Three Hundred Dollars ($300.00).

HISTORY: Laws, 1982, ch. 469, § 4; reenacted and amended, Laws, 1984, ch.

516, § 4; reenacted and amended, Laws, 1988, ch. 531, § 4; Laws, 1994, ch. 434, § 2, eff from and after January 1, 1995.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Specific provision for exemption from ad valorem taxes as to registered aircraft, see § 27-31-27.

Provision that tax assessors shall include on the personal property tax roll a list of aircraft which have not been registered as required under this chapter, see §§ 27-35-15 and 27-35-23.

The responsibility of the State Tax Commission to furnish a list of aircraft owners whose aircraft are liable for registration, see § 61-15-11.

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. Legal Forms 2d, Aviation, §§ 34.41 et seq. (lease of aircraft).

§ 61-15-9. Maintenance of records on registered aircraft; assignment of license number; registration stickers; replacement of certificate of registration; renewal of registration; sale of registration certificate; transfer of registration.

(1) Upon receipt of an application for the registration of an aircraft, as herein provided, the county tax collector shall file such application and register such aircraft with the name and address of the owner, manufacturer or dealer, as the case may be, together with facts stated in such application under the distinctive number assigned to such aircraft in the manner prescribed by the State Tax Commission.

(2) Upon the filing of such application and the payment of the fee herein provided for, the county tax collector shall assign to that aircraft the distinctive license number used by the federal government to identify that aircraft, and issue and deliver to the owner a sticker containing a registration number to be posted on the aircraft in a conspicuous place at the discretion of the owner of such aircraft. Such stickers shall be furnished to the county tax collector by the State Tax Commission. Such certificate shall be subject to inspection by the State Tax Commission and/or the county tax collector. A list of each application and certificate shall be provided by the State Tax Commission to the Mississippi Department of Transportation. The State Tax Commission may provide each county and municipality with the full details of aircraft registrations and collections hereunder.

(3) In the event of loss, mutilation or destruction of a certificate of registration, the owner of a registered aircraft may obtain from the county tax collector a duplicate thereof upon filing with the county tax collector an

affidavit showing the facts and upon the payment of a service charge of Ten Dollars ($10.00) for each duplicate.

(4) Such registration shall be renewed annually and in the same manner and upon payment of the same fee as provided for the original aircraft registration.

(5) The sale of registration certificates for aircraft shall be by the county tax collector.

(6) Registration of aircraft may be transferred upon payment of a fee of Ten Dollars ($10.00).

HISTORY: Laws, 1982, ch. 469, § 5; reenacted and amended, Laws, 1984, ch. 516, § 5; reenacted, Laws, 1988, ch. 531, § 5; Laws, 1992, ch. 496, § 33; Laws, 1994, ch. 434, § 3, eff from and after January 1, 1995.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Provision that tax assessors shall include on the personal property tax roll a list of aircraft which have not been registered as required under this chapter, see §§ 27-35-15 and 27-35-23.

§ 61-15-11. Registration schedule and rates; applicability of laws relating to sales tax; prorata registration and taxation; listing of aircraft on personal property rolls.

(1) Registration fees shall be paid to and collected by the tax collector of the county in which the aircraft is based.

The registration and reregistration of aircraft shall be subject to the following schedule and rates:

(a) Aircraft other than those described in paragraph (b) of this subsection shall be taxed according to the following schedule:

MAXIMUM CERTIFICATED GROSS WEIGHT OF AIRCRAFT IN POUNDS	FEE
Less than 3,600	$ 25.00
3,601 through 10,000	250.00
10,001 and over	2,500.00

(b) Antique aircraft, as defined by the Federal Aviation Administration, sailplanes, balloons and home-built aircraft shall be subject to a flat rate fee of Twenty-five Dollars ($25.00);

(2) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall

apply to all persons liable for taxes under the provisions of this chapter, and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in said Sales Tax Law, except that in cases of conflict, then the provisions of this chapter shall control.

(3) Aircraft purchased after January 1 of each year and subject to registration as herein provided shall be registered and taxed on a prorated basis by month. Registration fees shall be in lieu of all aircraft ad valorem taxes except as provided in subsection (4) of this section. All such monies collected shall be distributed as provided in this subsection.

The county tax collector shall determine for each county and for each municipality, if any, having aircraft within its boundaries which are subject to this chapter and the registration fees collected on aircraft in each county and municipality. The amount so determined due each county and municipality shall be divided equally between the county and municipality and the amount due the municipality shall be transmitted monthly to the city clerk of the municipality. The counties and municipalities shall allocate such revenues to funds in the same manner and proportion as revenues from ad valorem taxes within the county and municipality.

(4) The county tax collector shall make reasonable efforts to determine which aircraft in their county have been registered as required by this chapter. The county tax collector shall, on or before June 1 of each year, furnish to the tax assessor of their county a list of aircraft owners which have aircraft that are registered, setting forth the description of the aircraft and the location of the aircraft as to county and municipality. The tax assessor shall, upon receipt of the list, add the aircraft which have not been registered to the personal property roll of the county and of the municipality in which the aircraft may be located and such aircraft shall be taxed as other personal property within the county and municipality except as provided hereinafter. The county tax collector may accept registration fees, as follows:

(a) Fees on a prorated basis by month for aircraft purchased in a bona fide, good faith transaction after January 1 of the registration year; or

(b) Total fees and penalties for aircraft liable for registration on January 1 when the owner of the aircraft was the owner on January 1 of the registration year.

The tax assessor may remove an aircraft from the personal property rolls prior to December 31 of the registration year upon receipt of a notice from the county tax collector that the registration fees and penalties, when required, have been paid in full by the owner of the aircraft. The aircraft may not be removed from the personal property rolls after December 31 of the registration year.

HISTORY: Laws, 1982, ch. 469, § 6; reenacted and amended, Laws, 1984, ch. 478, § 30; reenacted and amended, Laws, 1984, ch. 516 § 6; Laws, 1986, ch. 405, § 1; reenacted and amended, Laws, 1988, ch. 531, § 6; Laws, 1994, ch. 434, § 4, eff from and after January 1, 1995.

Cross References — Specific provisions exempting registered aircraft from ad valorem taxes, see §§ 27-31-27 and 61-15-7.

Provision that tax assessors shall include on the personal property tax roll a list of aircraft which have not been registered as required under this chapter, see §§ 27-35-15 and 27-35-23.

§ 61-15-13. Promulgation of rules and regulations by State Tax Commission.

Authority is hereby given to the State Tax Commission to promulgate rules and regulations for the purpose of regulating and enforcing this chapter.

HISTORY: Laws, 1982, ch. 469, § 7; reenacted, Laws, 1984, ch. 516, § 7; reenacted, Laws, 1988, ch. 531, § 7, eff from and after January 1, 1989.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Provision that tax assessors shall include on the personal property tax roll a list of aircraft which have not been registered as required under this chapter, see §§ 27-35-15 and 27-35-23.

CHAPTER 17.

CONCEALING OR MISREPRESENTING AIRCRAFT IDENTIFICATION NUMBER; NON-CONFORMING AIRCRAFT FUEL CONTAINERS

Sec.

61-17-1. Possession, sale, receipt, etc., of aircraft or part on which identification numbers have been altered, removed, etc.
61-17-3. Failure to display aircraft identification number.
61-17-5. Maintenance or possession of aircraft with non-conforming fuel container.
61-17-7. Equipping aircraft with, or installing in aircraft, non-conforming fuel container.
61-17-9. Ownership or possession of improperly registered aircraft.
61-17-11. Probable cause to inspect aircraft for violation.
61-17-13. Penalties for violation of §§ 61-17-1 through 61-17-9.

§ 61-17-1. Possession, sale, receipt, etc., of aircraft or part on which identification numbers have been altered, removed, etc.

It shall be unlawful, with intent to conceal or misrepresent the true identity of the aircraft, for any person, firm, association or corporation to knowingly possess, buy, sell, offer for sale, receive, dispose of, conceal or to endeavor to possess, buy, sell, offer for sale, receive, dispose of or conceal, any aircraft or part thereof on which the assigned aircraft identification number has been altered, removed, destroyed, covered or defaced, or to maintain such aircraft in any manner which conceals or misrepresents the true identity of the aircraft.

HISTORY: Laws, 1988, ch. 427, § 1, eff from and after July 1, 1988.

Cross References — What constitutes probable cause authorizing further inspection of an aircraft when violation of this section is suspected, see § 61-17-11.
Penalty for violation of this section, see § 61-17-13.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 13 et seq., 28 et seq., 208 et seq.

3 Am. Jur. Legal Forms 2d, Aviation §§ 34:11 et seq. (aircraft and aircraft equipment; sales).

§ 61-17-3. Failure to display aircraft identification number.

It shall be unlawful, with intent to conceal or misrepresent the true identity of the aircraft, to fail to have the aircraft identification number clearly displayed on the aircraft and in compliance with Federal Aviation Administration regulations.

HISTORY: Laws, 1988, ch. 427, § 2, eff from and after July 1, 1988.

Cross References — What constitutes probable cause authorizing further inspection of an aircraft when violation of this section is suspected, see § 61-17-11.

Penalty for a violation of this section, see § 61-17-13.

RESEARCH REFERENCES

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 13 et seq., 28 et seq., 208 et seq.

§ 61-17-5. Maintenance or possession of aircraft with non-conforming fuel container.

It shall be unlawful for any person, firm, association or corporation to knowingly own, maintain or possess any aircraft which has been equipped with or had installed in its wings or fuselage, any fuel tank, bladder, drum or other container which will hold fuel and which does not conform to Federal Aviation Administration regulations or which has not been approved by the Federal Aviation Administration by special permit.

HISTORY: Laws, 1988, ch. 427, § 3, eff from and after July 1, 1988.

Cross References — What constitutes probable cause authorizing further inspection of an aircraft when violation of this section is suspected, see § 61-17-11.

Penalty for a violation of this section, see § 61-17-13.

RESEARCH REFERENCES

ALR.

Risks and causes of loss covered or excluded by aviation liability policy. 86 A.L.R.3d 118.

Products liability: personal injury or death allegedly caused by defect in aircraft or its parts, supplies, or equipment. 97 A.L.R.3d 627.

Products liability: Manufacturer's post-sale obligation to modify, repair, or recall product. 47 A.L.R.5th 395.

Am. Jur.

8A Am. Jur. 2d, Aviation §§ 13 et seq., 28 et seq., 208 et seq.

§ 61-17-7. Equipping aircraft with, or installing in aircraft, non-conforming fuel container.

It shall be unlawful for any person, firm, association or corporation to equip any aircraft with, or to install in the wings or fuselage of any aircraft, any fuel tank, bladder, drum or other container which will hold fuel and which does not conform to Federal Aviation Administration regulations or which has not been approved by the Federal Aviation Administration by special permit.

HISTORY: Laws, 1988, ch. 427, § 4, eff from and after July 1, 1988.

Cross References — What constitutes probable cause authorizing further inspec-

tion of an aircraft when violation of this section is suspected, see § 61-17-11.
Penalty for a violation of this section, see § 61-17-13.

RESEARCH REFERENCES

ALR.
Liability for alleged negligence of independent servicer or repairer of aircraft. 41 A.L.R.3d 1320.
Risks and causes of loss covered or excluded by aviation liability policy. 86 A.L.R.3d 118.
Products liability: personal injury or death allegedly caused by defect in aircraft or its parts, supplies, or equipment. 97 A.L.R.3d 627.
Products liability: Manufacturer's post-sale obligation to modify, repair, or recall product. 47 A.L.R.5th 395.

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 13 et seq., 28 et seq., 208 et seq.

§ 61-17-9. Ownership or possession of improperly registered aircraft.

It shall be unlawful for any person, firm, association or corporation to knowingly own or possess an aircraft which is improperly registered with intent to conceal or misrepresent the true identity of the aircraft. Any aircraft registered to a nonexistent person, firm, association, corporation or address shall be in violation of this section. Any aircraft registered to a firm, association or corporation that has no physical location, no corporate officers, or has lapsed into an inactive state shall be in violation of this section.

HISTORY: Laws, 1988, ch. 427, § 5, eff from and after July 1, 1988.

Cross References — What constitutes probable cause authorizing further inspection of an aircraft when violation of this section is suspected, see § 61-17-11.
Penalty for a violation of this section, see § 61-17-13.

RESEARCH REFERENCES

Am. Jur.
8A Am. Jur. 2d, Aviation §§ 13 et seq., 28 et seq., 208 et seq.

§ 61-17-11. Probable cause to inspect aircraft for violation.

Any law enforcement officer who has reason to believe and does believe that a violation of Sections 61-17-1 through 61-17-9 has occurred shall have probable cause to make further inspection of the aircraft in question to ascertain its true identity.

HISTORY: Laws, 1988, ch. 427, § 6, eff from and after July 1, 1988.

§ 61-17-13. Penalties for violation of §§ 61-17-1 through 61-17-9.

Any person who violates Section 61-17-1 through 61-17-9 shall be guilty of a felony and, upon conviction, shall be imprisoned for not more than five (5) years or fined not more than Twenty-five Thousand Dollars ($25,000.00), or both.

HISTORY: Laws, 1988, ch. 427, § 7, eff from and after July 1, 1988.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

CHAPTER 19.

AVIATION HAZARDS

Sec.
61-19-1. Marking of certain anemometer towers required; violation.

§ 61-19-1. Marking of certain anemometer towers required; violation.

(1) For purposes of this section, the term anemometer means an instrument for measuring and recording the speed of the wind. For purposes of this section, the term anemometer tower means a structure, including all guy wires and accessory facilities, on which an anemometer is mounted for the purposes of documenting whether a site has wind resources sufficient for the operation of a wind turbine generator.

(2) Any anemometer tower that is fifty (50) feet in height above the ground or higher, that is located outside the exterior boundaries of any municipality, and whose appearance is not otherwise mandated by state or federal law shall be marked, painted, flagged, or otherwise constructed to be recognizable in clear air during daylight hours. Any anemometer tower that was erected before July 1, 2011, shall be marked as required in this section within one (1) year after July 1, 2011. Any anemometer tower that is erected on or after July 1, 2011, shall be marked as required in this section at the time it is erected. Marking required under this section includes marking the anemometer tower, guy wires, and accessory facilities as follows:

(a) The top one-third (⅓) of the anemometer tower shall be painted in equal, alternating bands of aviation orange and white, beginning with orange at the top of the tower and ending with orange at the bottom of the marked portion of the tower;

(b) Two (2) marker balls shall be attached to and evenly spaced on each of the outside guy wires;

(c) The area surrounding each point where a guy wire is anchored to the ground shall have a contrasting appearance with any surrounding vegetation. If the adjacent land is grazed, the area surrounding the anchor point shall be fenced. For purposes of this section, the term, area surrounding the anchor point, means an area not less than sixty-four (64) square feet whose outer boundary is at least four (4) feet from the anchor point; and

(d) One or more seven-foot safety sleeves shall be placed at each anchor point and shall extend from the anchor point along each guy wire attached to the anchor point.

A violation of this section is a misdemeanor.

HISTORY: Laws, 2011, ch. 475, § 1; Laws, 2013, ch. 329, § 1; Laws, 2017, ch. 352, § 1, eff from and after July 1, 2017.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

TITLE 63.

MOTOR VEHICLES AND TRAFFIC REGULATIONS

Chapter 1. Driver's License. 63-1-1
Chapter 2. Mandatory Use of Safety Seat Belts. 63-2-1
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Chapter 31. Operating Off-Road Vehicles. 63-31-1
Chapter 32. Operation of Golf Carts and Low-speed Vehicles on Municipal Public Roads. 63-32-1
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CHAPTER 1.

DRIVER'S LICENSE

Article 1. Driver's License. 63-1-1
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ARTICLE 1.

DRIVER'S LICENSE.

Sec.
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63-1-3. Definitions.
63-1-5. Requirement of motor vehicle operator's license; types of operator's licenses; penalty for violation of section.
63-1-6. Requirement of motorcycle operator's license; requirement of temporary motorcycle permit.
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63-1-7. Exemption from license requirement.
63-1-8. Authorization to negotiate reciprocal driver's license agreement with the Republic of China (Taiwan).
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63-1-11. Promulgation of rules and regulations.
63-1-13. Driver Services Division; director; technical, professional and clerical assistants.
63-1-15. Designation and duties of drivers' license examiners.
63-1-16. Department of Public Safety to furnish permanent license kiosk or examiner in each county seat at least one day per month if requested; kiosk equipment signage; Driver Services Division website to include online tutorial videos for use of website and "Wait Anywhere Appointment" program.
63-1-17. Maintenance of records relating to licenses and permits.
63-1-19. Application for license; notification of change of address or name by licensee; registration with Selective Service for certain males.
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63-1-27. Request for cancellation of minor's license by person signing application; release from liability for negligence or misconduct of minor.
63-1-29. Repealed.
63-1-31. Appeal from denial of application for license or temporary permit.

Sec.
63-1-33. Examination of applicant for license or learner's permit; inspection of applicant's automobile; certification of successful completion of driver education and training program at secondary school in lieu of examination; off-duty members of Mississippi Highway Safety Patrol authorized to teach; certification by parent, teacher or guardian of student's motor vehicle operation proficiency in lieu of department's skills test.
63-1-34. Provision of video-taped instructional material to assist reading impaired applicants in preparing for driver's license examinations.
63-1-34.1. Issuance of limited driver's license for persons using bioptic telescopic lenses; rehabilitation permit.
63-1-35. Form of license; use of Social Security Number of licensee; photograph of licensee; renewal of license by electronic means; registered sex offender's license to identify licensee as sex offender; designation as veteran on license upon request of honorably discharged veteran; electronic format for license or permit; penalty for provision of false documents.
63-1-37. Issuance of duplicate license.
63-1-39. Signatures on license.
63-1-41. Possession and display of license upon demand.
63-1-43. Fees for licenses generally.
63-1-45. Maintenance of records relating to application forms and fees; audit of forms and funds; receipt for fees; effect of dishonor of check; disposition of fees.
63-1-46. Fees for reinstatement of license subsequent to suspension, revocation or cancellation generally; disposition of fees; procedure and fees for reinstatement of license suspended for noncompliance with support order.
63-1-47. Duration and expiration of licenses; release of applicant's school attendance records to department of public safety; suspension of license of certain students who drop out of school.
63-1-49. Renewal of licenses.
63-1-51. Grounds and procedure for revocation of licenses; suspension of license for noncompliance with order for support.
63-1-52. Notice by Commissioner of Public Safety to person concerning suspension, cancellation or revocation of person's driver's license or driving privileges.
63-1-53. Notice to accused upon failure to pay fine; notice to Commissioner of Public Safety; authority of commissioner to suspend license without preliminary hearing; notice of suspension; hearing.
63-1-55. Suspension of license of minor by trial judge; requirement of completion of defensive driving course; costs and assessments; procedure upon appeal of suspension.
63-1-57. Driving while license or driving privilege cancelled, suspended or revoked.
63-1-58. License suspensions and restrictions to run consecutively.
63-1-59. Making false affidavit or statements.
63-1-60. Alteration, fraudulent use, or fraudulent procurement of license.
63-1-61. Causing or permitting child or ward under sixteen years of age to drive without authorization.
63-1-63. Permitting operation of vehicle by another person in violation of article.
63-1-65. Loan of license or temporary permit to another or use of another's permit or license.
63-1-67. Renting motor vehicle to another.
63-1-69. Punishment for violations where no specific penalty provided.
63-1-71. Revocation or suspension of driving privilege of person convicted of violation of Uniform Controlled Substance Law or violation of similar law of another jurisdiction; reduction of suspension in hardship cases.

Sec.	
63-1-73.	Repealed.

§ 63-1-1. Short title.

This article may be cited as the Highway Safety Patrol and Driver's License Law of 1938.

HISTORY: Codes, 1942, § 8076; Laws, 1938, ch. 143.

Cross References — Program of driver's education and training in public schools, see §§ 37-25-1 et seq.

Issuance of identification cards by the department of public safety, see §§ 45-35-1 et seq.

Provision of this article applicable to Mississippi Commercial Driver's License Law, see § 63-1-202.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 100 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 319 et seq.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-1-3. Definitions.

The following words and phrases when used in this article shall, for the purpose of such law, have the meanings respectively ascribed to them in this section:

(a) The term "commissioner" means the commissioner of public safety of this state;

(b) The term "highway" means every way or place of whatever nature open to the use of the public for the purpose of vehicular travel, and shall include streets of municipalities;

(c) The term "operator" means any person in actual physical control of a motor vehicle on the highway;

(d) The term "owner" means a person who holds the legal title of a vehicle; in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this article.

HISTORY: Codes, 1942, § 8077; Laws, 1938, ch. 143.

§ 63-1-5. Requirement of motor vehicle operator's license; types of operator's licenses; penalty for violation of section.

(1)(a) No person shall drive or operate a motor vehicle or an autocycle as defined in Section 63-3-103 upon the highways of the State of Mississippi without first securing an operator's license to drive on the highways of the state, unless specifically exempted by Section 63-1-7.

(b) The types of operator's licenses are:

(i) Class R;

(ii) Class D;

(iii) Class A, B or C commercial license governed by Article 5 of this chapter; and

(iv) Interlock-restricted license as prescribed in Section 63-11-31.

(2)(a) Every person who makes application for an original license or a renewal license to operate any single vehicle with a gross weight rating of less than twenty-six thousand one (26,001) pounds or any vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand (10,000) pounds other than vehicles included in Class C, vehicles which require a special endorsement, or to operate a vehicle as a common carrier by motor vehicle, taxicab, passenger coach, dray, contract carrier or private commercial carrier as defined in Section 27-19-3, other than those vehicles for which a Class A, B or C license is required under Article 5 of this chapter, may, in lieu of the Class R regular driver's license, apply for and obtain a Class D driver's license. The fee for the issuance of a Class D driver's license shall be as set forth in Section 63-1-43 and the Class D license shall be valid for the term prescribed in Section 63-1-47. Except as required under Article 5 of this chapter, no driver of a pickup truck shall be required to have a Class D or a commercial license regardless of the purpose for which the pickup truck is used.

(b) Persons operating vehicles listed in paragraph (a) of this subsection for private purposes or in emergencies need not obtain a Class D license.

(3) An interlock-restricted license allows a person to drive only a motor vehicle equipped with an iginition-interlock device.

(4) A person who violates this section is guilty of a misdemeanor and, upon conviction, may be punished by imprisonment for not less than two (2) days nor more than six (6) months, by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00), or both.

HISTORY: Codes, 1942, § 8091; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 5; Laws, 2011, ch. 468, § 3; Laws, 2014, ch. 424, § 8; Laws, 2015, ch. 406, § 4; Laws, 2016, ch. 503, § 8, eff from and after Oct. 1, 2016; Laws, 2021, ch. 414, § 2, eff from and after passage (approved April 5, 2021); Laws, 2021, ch. 464, § 8, eff from and after passage (approved April 16, 2021).

Joint Legislative Committee Note — Section 2 of Chapter 414, Laws of 2021, effective upon passage (approved April 5, 2021), amended this section. Section 8 of Chapter 464, Laws of 2021, effective upon passage (approved April 16, 2021) also amended this section. As set out above, this section reflects the language of Section 8 of Chapter 464, which contains language that specifically provides that it supersedes § 63-1-5 as amended by Chapter 414, Laws of 2021.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of paragraph (i). The word "retain" was changed to "retail" so that "delivery of new motor vehicles to retain buyers" now reads as "delivery of new motor vehicles to retail buyers." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Amendment Notes — The first 2021 amendment (ch. 414), effective April 5, 2021, in (1)(b), deleted former (iv), which read: "Intermediate license; and," made a related change, and redesignated former (v) as (iv).

The second 2021 amendment (ch. 464), effective April 16, 2021, in (1)(b), deleted former (iv), which read: "Intermediate license; and" made a related change, and redesignated former (v) as (iv).

Cross References — Municipal licensing of drivers or operators of buses of transportation systems for transportation of passengers, see §§ 21-27-151 et seq.

Issuance of identification cards by the department of public safety, see § 45-35-1 et seq.

Motorcycle operator's license, see § 63-1-6.

Deposit of driver's license in lieu of bail in traffic cases, see § 63-9-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Charging instruments

Town provided defendant with charging instruments because the two traffic tickets a police officer issued to defendant met the requirements established by Miss. Code Ann. § 63-9-21(3)(c) and complied with Miss. Unif. Cir. & Cty. R. 7.06; in addition, the town supplemented its discovery disclosures and explicitly informed defendant that he was charged with operating a motor vehicle without a valid driver's license and failing to maintain or provide proof of insurance. Caissie v. State, 254 So. 3d 849, 2018 Miss. App. LEXIS 110 (Miss. Ct. App. 2018), cert. denied, 254 So. 3d 170, 2018 Miss. LEXIS 410 (Miss. 2018), cert. denied, — U.S. —, 140 S. Ct. 100, 205 L. Ed. 2d 36, 2019 U.S. LEXIS 4809 (U.S. 2019).

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory prohibition to a trusty (inmate) without a valid driver's license driving a county vehicle from a parking place to a wash rack, all on the same premises and without traveling on a public road. Kuykendall, Aug. 20, A.G. Op. 04-0397.

§ 63-1-6. Requirement of motorcycle operator's license; requirement of temporary motorcycle permit.

(1) Unless exempted under Section 63-1-7 or Section 63-1-6.1, no person shall drive or operate a motorcycle, except for an autocycle as defined in Section 63-3-103, upon the highways of the State of Mississippi without first securing an operator's license with a motorcycle endorsement upon it.

(2)(a) A motorcycle endorsement may be issued to any person who holds a valid Mississippi driver's license and meets the other requirements for a motorcycle endorsement contained in this chapter.

(b) Every applicant for a motorcycle endorsement shall first obtain a temporary motorcycle permit, successfully complete the examination provided in Section 63-1-33, and pay the temporary motorcycle permit fee and examination fee prescribed in Section 63-1-43. Applicants for a temporary motorcycle permit shall:

(i) Be at least fifteen (15) years of age;

(ii) Operate a motorcycle only under the direct supervision of a person at least twenty-one (21) years of age who possesses either a valid driver's or operator's license with a motorcycle endorsement or a valid restricted motorcycle operator's license;

(iii) Be prohibited from transporting a passenger on a motorcycle;

(iv) Be prohibited from operating a motorcycle upon any controlled access highway; and

(v) Be prohibited from operating a motorcycle during the hours of 6:00 p.m. through 6:00 a.m.

Temporary motorcycle driving permits shall be valid for the same period of time and may be renewed upon the same conditions as learner's permits issued under Section 63-1-21.

HISTORY: Laws, 1985, ch. 376, § 1; Laws, 2014, ch. 424, § 9; Laws, 2015, ch. 406, § 3; Laws, 2015, ch. 464, § 4, eff from and after July 1, 2015; Laws, 2021, ch. 464, § 9, eff from and after passage (approved April 16, 2021).

Joint Legislative Committee Note — Section 3 of Chapter 406, Laws of 2015, effective from and after July 1, 2015 (approved March 23, 2015), amended this section. Section 4 of Chapter 464, Laws of 2015, effective from and after July 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of Section 4 of Chapter 464, Laws of 2015, which contains language that specifically provides that it supersedes § 63-1-6 as amended by Chapter 406, Laws of 2015.

Amendment Notes — The 2021 amendment, effective April 16, 2021, in the last paragraph, deleted "regular" preceding "learner's permits."

Cross References — License requirement in general, see § 63-1-5.
Exemptions from license requirement, see § 63-1-7.
Persons not entitled to license, see § 63-1-9.
Duties of license examiners, see § 63-1-15.
Application for license, see § 63-1-19.
Temporary driving permits, see § 63-1-21.
Parental consent for application of person under age of 17, see § 63-1-23.
Appeal of license denial, see § 63-1-31.
Driver's examination, see § 63-1-33.
Form of license, see § 63-1-35.
Duplicate licenses, see § 63-1-37.
Signing of license by applicant, see § 63-1-39.
Possession of license while driving, see § 63-1-41.
Fee for restricted motorcycle operator's license, see § 63-1-43.
License examiners tender of fees and applications to commissioner, see § 63-1-45.
Fee for reinstatement of license, see § 63-1-46.

Duration and renewal of licenses, see § 63-1-47.
Renewal of expired license, see § 63-1-49.
Revocation of license, see § 63-1-51.
Driving while license is suspended or revoked, see § 63-1-57.
Using the operator's license of another person, see § 63-1-65.

JUDICIAL DECISIONS

1. Vehicle purchase.

Trial court erred by denying a seller's motion for summary judgment in the parents' wrongful death action, as Mississippi law did not impose a duty on the seller, sufficient to support a negligence claim, to restrict motor vehicle sales to licensed drivers or to determine the competence of drivers as part of the sale; the son was not required to have an "E" endorsement on his license to purchase the motorcycle, only to drive the motorcycle on a highway. Laurel Yamaha, Inc. v. Freeman, 956 So. 2d 897, 2007 Miss. LEXIS 316 (Miss. 2007).

§ 63-1-6.1. Rented motor scooters may be operated on public roads in or near universities without obtaining motorcycle endorsement under certain circumstances.

(1) No person shall be required to secure a driver's license with a motorcycle endorsement upon it while operating a motor scooter as defined in Section 63-3-103 provided that:

(a) The person is not the owner of the motor scooter and is only renting the scooter for a period of time not to exceed forty-eight (48) hours.

(b) The person is operating the motor scooter within the corporate limits of a municipality in which a university campus is located or is immediately adjacent to, or within the limits of, the university's campus.

(c) The person has been issued and has on their person a regular or commercial driver's license issued by the State of Mississippi or the state of their residence.

(2) Any scooter operated on the roads or highways of this state under this section shall not be operated:

(a) At a rate of speed greater than thirty (30) miles per hour;

(b) On a road which has a speed limit greater than thirty-five (35) miles per hour; or

(c) On any road or highway which is prohibited under Section 63-3-210.

HISTORY: Laws, 2015, ch. 464, § 1, eff from and after July 1, 2015.

§ 63-1-7. Exemption from license requirement.

No license issued pursuant to this article shall be required of:

(a) Any person while operating a motor vehicle for military purposes, if the person is a member of the United States Armed Forces or Reserves on active duty, a member of the National Guard on active duty or full-time National Guard duty, a National Guard military technician, or participating in part-time National Guard training.

(b) Any nonresident person who has in his immediate possession a valid license to drive a motor vehicle on the highways of his home state or country, issued to him by the proper authorities of his home state or country, or of any nonresident person whose home state or country does not require the licensing of a person to operate a motor vehicle on the highways but does require him to be duly registered. Such person being eighteen (18) years of age or older may operate a motor vehicle in the state for a period of sixty (60) consecutive days without securing a license. However, any nonresident person operating a motor vehicle in this state shall be subject to all the provisions of this article, except as specified above.

(c) Any person while operating a road roller, road machinery or any farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highways.

(d) Any engineer or motorman using tracks for road or street, though used in the streets.

(e) Any person while operating an electric personal assistive mobility device as defined in Section 63-3-103.

(f) A member of any active or reserve component branch of the United States of America Armed Forces, or a spouse or a dependent child not less than sixteen (16) years of age of a member of any active or reserve component branch of the United States of America Armed Forces, who has been licensed as a driver under a law requiring the licensing of drivers in his home state and who has in his immediate possession a valid driver's license issued to him in his home state shall be permitted without examination or license under this article to drive a motor vehicle on public roads, streets and highways of the State of Mississippi. The provisions of this paragraph shall not be affected by the person's, spouse's or dependent child's ownership of a motor vehicle registered in the State of Mississippi.

HISTORY: Codes, 1942, § 8092; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 6; Laws, 1994, ch. 588, § 3; Laws, 2003, ch. 485, § 7; Laws, 2005, ch. 541, § 1; Laws, 2016, ch. 342, § 2, eff from and after July 1, 2016; Laws, 2021, ch. 372, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment added (f).

Cross References — License of motorcycle operator, see § 63-1-6.

JUDICIAL DECISIONS

1. Charging instruments

Town provided defendant with charging instruments because the two traffic tickets a police officer issued to defendant met the requirements established by Miss. Code Ann. § 63-9-21(3)(c) and complied with Miss. Unif. Cir. & Cty. R. 7.06; in addition, the town supplemented its discovery disclosures and explicitly informed defendant that he was charged with operating a motor vehicle without a valid driver's license and failing to maintain or provide proof of insurance. Caissie v. State, 254 So. 3d 849, 2018 Miss. App. LEXIS 110 (Miss. Ct. App. 2018), cert. denied, 254 So. 3d 170, 2018 Miss. LEXIS 410 (Miss. 2018), cert. denied, — U.S. —, 140 S. Ct. 100, 205 L. Ed. 2d 36, 2019 U.S. LEXIS 4809 (U.S. 2019).

OPINIONS OF THE ATTORNEY GENERAL

Person who has had license revoked for DUI may legally operate road roller, road machinery, farm tractor, or implement of husbandry which is temporarily on highways. Harper, April 24, 1991, A.G. Op. #91-0261.

An individual who has had his license suspended or revoked may still legally operate a road roller, road machinery, farm tractor, or implement of husbandry which is temporarily on the highways, in accordance with Section 63-1-7(c). Miletich, March 8, 1996, A.G. Op. #96-0113.

A person who does not have a Mississippi driver's license may operate machinery, such as backhoes, tractors, and other farm equipment on the public streets and highways. Brewer, June 23, 2000, A.G. Op. #2000-0345.

§ 63-1-8. Authorization to negotiate reciprocal driver's license agreement with the Republic of China (Taiwan).

The Commissioner of Public Safety is authorized to negotiate a mutual agreement between the Mississippi Department of Public Safety and the Republic of China (Taiwan), through the Ministry of Transportation and Communications represented by the Director General of the Taipei Economic and Cultural Office in Houston, Texas, for reciprocity in issuing driver's licenses to citizens of the State of Mississippi residing in the Republic of China (Taiwan) and to Taiwanese citizens residing in the State of Mississippi. The mutual agreement shall be written and signed by the commissioner and Director General.

HISTORY: Laws, 2014, ch. 438, § 1, eff from and after passage (approved Mar. 26, 2014).

§ 63-1-9. Persons prohibited from obtaining license; issuance of learner's permits and driver's licenses.

(1) No driver's license or learner's permit shall be issued pursuant to this article:

(a) To any person under the age of eighteen (18) years except as provided in this article.

(b) To any person whose license to operate a motor vehicle on the highways of Mississippi has been previously revoked or suspended by this state or any other state or territory of the United States or the District of Columbia, if the revocation or suspension period has not expired.

(c) To any person who is an habitual drunkard or who is addicted to the use of other narcotic drugs.

(d) To any person who would not be able by reason of physical or mental disability to operate a motor vehicle on the highways with safety. However, persons who have one (1) arm or leg, or have arms or legs deformed, and are driving a car provided with mechanical devices whereby the person is able to drive in a safe manner over the highways, if otherwise qualified, shall receive an operator's license the same as other persons. Moreover, deafness shall not be a bar to obtaining a license.

(e) To any person as an operator who has previously been adjudged to be afflicted with and suffering from any mental disability and who has not at time of application been restored to mental competency.

(f) To any unmarried person under the age of eighteen (18) years who does not at the time of application present a diploma or other certificate of high school graduation or a general educational development certificate issued to the person in this state or any other state; or on whose behalf documentation has not been received by the Department of Public Safety from that person or a school official verifying that the person:

(i) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate;

(ii) Is enrolled in school in this state or any other state;

(iii) Is enrolled in a "nonpublic school," as such term is defined in Section 37-13-91(2)(i); or

(iv) Is unable to attend any school program due to circumstances deemed acceptable as set out in Section 63-1-10.

(g) To any person under the age of eighteen (18) years who has been convicted under Section 63-11-30.

(2) All permits and licenses issued on or before July 31, 2009, shall be valid according to the terms upon which issued. From and after August 1, 2009:

(a) A learner's permit may be issued to any person who is at least fifteen (15) years of age who otherwise meets the requirements of this article.

(b) A driver's license may be issued to any person who is at least sixteen (16) years of age who otherwise meets the requirements of this article and who has held a learner's permit for at least one (1) year without any conviction under Section 63-11-30 or of a moving violation. Any conviction under Section 63-11-30 or of a moving violation shall restart the one-year requirement for the holding of a learner's permit before an applicant can qualify for a driver's license. An applicant for a driver's license who was unable to make timely application in 2020 for a learner's permit, due to the closure of driver's license offices owing to the Coronavirus Disease 2019 (COVID-19), shall have the period in which he or she was eligible but unable to apply credited toward the one-year requirement for the holding of a learner's permit.

(c) An applicant for a Mississippi driver's license who, at the time of application, is at least sixteen (16) years of age and who has held a valid motor vehicle driver's license issued by another state for at least six (6) months shall not be required to hold a learner's permit before being issued a driver's license.

(3) The commissioner shall ensure that the learner's permit and driver's license issued under this article are clear, distinct and easily distinguishable from one another.

HISTORY: Codes, 1942, § 8093; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 7; Laws, 1994, ch. 588, § 1; Laws, 1995, ch. 540, § 2; Laws, 1996, ch. 527, § 1; Laws, 2000, ch. 624, § 2; Laws, 2009, ch. 488, § 1; Laws, 2014, ch. 424, § 19, eff from and after Oct. 1, 2014; Laws, 2020, ch. 471, § 1, eff from and after July 1, 2020; Laws,

2021, ch. 414, § 3, eff from and after passage (approved April 5, 2021); Laws, 2021, ch. 464, § 2, eff from and after passage (approved April 16, 2021).

Joint Legislative Committee Note — Section 3 of Chapter 414, Laws of 2021, effective upon passage (approved April 5, 2021), amended this section. Section 2 of Chapter 464, Laws of 2021, effective upon passage (approved April 16, 2021) also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 464, which contains language that specifically provides that it supersedes § 63-1-9 as amended by Chapter 414, Laws of 2021.

Editor's Notes — Laws, 1990, Chapter 588, § 21, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions were not implemented. The text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Amendment Notes — The first 2021 amendment (ch. 414), effective April 5, 2021, in (1), deleted "intermediate license" following "driver's license"; in (2), deleted former (b), which related to the issuance of an intermediate license, redesignated former (c) and (d) as (b) and (c), in (b), substituted "sixteen (16)" for "sixteen and one-half (16-1/2)" and "a regular learner's permit for at least one (1) year" for "an intermediate license for at least six (6) months" in the first sentence, substituted "one-year" for "six-month" and "a regular learner's permit" for "an intermediate license" in the second sentence, and deleted the former last two sentences, which read: "However, a person who is at least seventeen (17) years of age who has been issued a regular learner's permit and who has never been convicted under Section 63-11-30 or of a moving violation shall not be required to have held an intermediate license. An applicant for a driver's license who was unable to make timely application in 2020 for an intermediate license, due to the closure of driver's license offices owing to the Coronavirus Disease 2019 (COVID-19), shall have the period in which he or she was eligible but unable to apply credited toward the six-month requirement for the holding of an intermediate license," and in (c), substituted "sixteen (16)" for "sixteen and one-half (16-1/2)" and deleted "or an intermediate license" following "learner's permit"; and in (3), deleted "intermediate license" following "learner's permit."

The second 2021 amendment (ch. 464), effective April 16, 2021, in (1), deleted "intermediate license" following "driver's license" and "regular" preceding "learner's permit;" in (2), in (a), deleted "regular" preceding "learner's permit", deleted former (b), which related to the issuance of an intermediate license, redesignated former (c) and (d) as (b) and (c), in (b), substituted "sixteen (16)" for "sixteen and one-half (16-1/2)" and "a learner's permit for at least one (1) year" for "an intermediate license for at least six (6) months" in the first sentence, substituted "one-year" for "six-month" and "a learner's permit" for "an intermediate license" in the second sentence, deleted the former next-to-last sentence, which read: "However, a person who is at least seventeen (17) years of age who has been issued a regular learner's permit and who has never been convicted under Section 63-11-30 or of a moving violation shall not be required to have held an intermediate license," and in the last sentence, substituted "a learner's permit" for "an intermediate license" twice, and "one-year" for "six-month," in (c), substituted "sixteen (16)" for "sixteen and one-half (16-1/2)," deleted "regular" preceding "learners permit" and "or an intermediate license" thereafter; and in (3), deleted "regular" preceding "learner's permit" and "intermediated license thereafter."

Cross References — Issuance of identification cards by the department of public safety, see § 45-35-1 et seq.

Motorcycle operator's license, see § 63-1-6.
Driver license compact law, see §§ 63-1-101 et seq.

JUDICIAL DECISIONS

1. In general.

The provision fixing a minimum age for licensing drivers is a legislative determination that a child under that age does not possess sufficient judgment and discretion to operate an automobile. United Gas Pipe Line Co. v. Jones, 236 Miss. 471, 111 So. 2d 240, 1959 Miss. LEXIS 341 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Automobiles: driving under the influence, or when addicted to the use, of drugs as criminal offense. 17 A.L.R.3d 815.

Denial, suspension, or cancellation of driver's license because of physical disease or defect. 38 A.L.R.3d 452.

Validity, construction, and application of age requirements for licensing of motor vehicle operators. 86 A.L.R.3d 475.

Liability of donor of motor vehicle for injuries resulting from owner's operation. 22 A.L.R.4th 738.

State's liability to one injured by improperly licensed driver. 41 A.L.R.4th 111.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 112-115.

CJS.

60 C.J.S., Motor Vehicles §§ 319, 331 et seq.

§ 63-1-10. Educational requirements for issuance of license to person under eighteen years of age; documentation; appeal of denial of license.

(1) Upon the written request of a parent or guardian of any applicant for a license under eighteen (18) years of age, the school district in which the applicant is enrolled shall submit documentation to the Department of Public Safety verifying that the applicant is in compliance with Section 63-1-9(1)(g). The verification shall be signed by the school principal or his designee, or, in the case of a home study program, the parent, or the adult education supervisor of the General Educational Development Program or his designee. If the student is enrolled in a nonpublic school, the school principal or his designee is encouraged to submit the verification on behalf of the student. Documentation of the applicant's enrollment status shall be submitted on a form designed by the State Department of Education that includes the written signed and notarized parent or guardian's consent authorizing the release of the applicant's attendance records to the Department of Public Safety, as approved by the Department of Public Safety, in a manner that insures the authenticity of the form and the information or signature contained thereon, including via facsimile. The forms required under this section to provide documentation shall be made available to all public high schools, private schools accredited by the State Board of Education, adult education supervisors at school board offices and, upon request, to others through the Department of Public Safety.

(2) Whenever an applicant or licensee who is under eighteen (18) years of age is unable to attend any school program due to acceptable circumstances, the school where the student last attended shall transmit documentation to the department to excuse such student from the provisions of Section 63-1-9(1)(g). The school principal or his designee shall determine whether nonattendance or absences are excused pursuant to Section 37-13-91. For purposes of this section, suspension or expulsion from school or incarceration in a correctional institution is not an acceptable circumstance for a person being unable to attend school.

(3) Any person denied a license for failure to satisfy the education requirements of Section 63-1-9(1)(g) shall have the right to file a request within thirty (30) days thereafter for a hearing before the Department of Public Safety to determine whether the person is entitled to a license or is subject to the cancellation of his license under the provisions of this section. The hearing shall be held within ten (10) days of the receipt by the department of the request. Appeal from the decision of the department may be taken under Section 63-1-31.

HISTORY: Laws, 1994, ch. 588, § 2; Laws, 2009, ch. 488, § 2, eff from and after July 1, 2009.

RESEARCH REFERENCES

ALR.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle. 18 A.L.R.5th 542.

§ 63-1-10.1. Report when student under eighteen who has been issued license or temporary license is coded as drop out.

A school superintendent or designee shall report to the Department of Education on a schedule determined by the State Board of Education when a student under eighteen (18) years of age who has been issued a driver's license or temporary learning permit has been coded as a "dropout" as defined by the State Board of Education. The Department of Education will provide notification to the Department of Public Safety of those students under eighteen (18) years of age who have obtained a driver's license or temporary learning permit and have been coded by the local school district as a "dropout" upon verification that prior written parental consent for the release of educational records has been obtained in compliance with the Family Educational Rights and Privacy Act of 1974, as amended, 20 USCS Section 1232g.

HISTORY: Laws, 2009, ch. 560, § 32, eff from and after July 1, 2009; Laws, 2021, ch. 414, § 4, eff from and after passage (approved April 5, 2021); Laws, 2021, ch. 464, § 10, eff from and after passage (approved April 16, 2021).

Joint Legislative Committee Note — Section 4 of Chapter 414, Laws of 2021, effective upon passage (approved April 5, 2021), amended this section. Section 10 of Chapter 464, Laws of 2021, effective upon passage (approved April 16, 2021) also amended this section. As set out above, this section reflects the language of Section 10 of Chapter 464, which contains language that specifically provides that it supersedes § 63-1-10.1 as amended by Chapter 414, Laws of 2021.

Section 1 of ch. 388, Laws, 2002, eff from and after September 1, 2002 (approved March 19, 2002), amended this section. Section 3 of ch. 584, Laws, 2002, eff from and after September 1, 2002 (approved April 11, 2002), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 584, Laws, 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference at the end of the section by substituting "Family Educational Rights and Privacy Act of 1974, as amended, 20 USCS Section 1232g" for "Family Educational Rights and Privacy Act of 1972, as amended, 20 USCS Section 1232." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Amendment Notes — The first 2021 amendment (ch. 414), effective April 5, 2021, deleted "intermediate license" following "a driver's license" both times it appears.

The second 2021 amendment (ch. 464), effective April 16, 2021, deleted "intermediate license" following "a driver's license" both times it appears.

§ 63-1-11. Promulgation of rules and regulations.

The provisions of this article with reference to administration shall be under the supervision of the commissioner of public safety at Jackson, Mississippi, who, if not otherwise specifically authorized, is hereby empowered to make and promulgate reasonable rules and regulations to carry out the provisions of this article.

HISTORY: Codes, 1942, § 8099; Laws, 1938, ch. 143.

OPINIONS OF THE ATTORNEY GENERAL

The Commissioner may at his discretion waive or change any regulations or policies adopted by the Mississippi Highway Safety Patrol regarding road tests or any other policies adopted to carry out Section 63-1-11. Head, July 26, 1995, A.G. Op. #95-0419.

The Commissioner of Public Safety may adopt a method to assign an alternate identifier for a driver's license for an individual who cannot obtain a Social Security number from the Social Security Administration. Head, September 14, 1998, A.G. Op. #98-0553.

RESEARCH REFERENCES

ALR.

Liability of highway user for injuries resulting from failure to remove or protect against material spilled from vehicle onto public street or highway. 34 A.L.R.4th 520.

§ 63-1-13. Driver Services Division; director; technical, professional and clerical assistants.

The commissioner is hereby authorized and empowered to appoint a Director of the Driver Services Division who is a qualified elector of the State of Mississippi and who meets the qualifications set by the State Personnel Board for the position. Such director shall execute and furnish a bond in the amount of Ten Thousand Dollars ($10,000.00) with a surety company authorized to do business in this state. The bond shall be conditioned on the faithful performance of his duties and be subject to the approval of the commissioner. The director shall have control and supervision of the Driver Services Division and shall be answerable to the commissioner in the performance of his duties.

The commissioner shall employ such other technical, professional and clerical assistants as may be needed to conduct the work of the division. The commissioner is also authorized to employ a Director of the Driver License Examining Bureau, who meets the qualifications set by the State Personnel Board for the position, and the necessary supervising examiners, who meet the qualifications set by the State Personnel Board for the position, to assist the Director of the Driver License Examining Bureau in the supervision of the license personnel. The commissioner is also authorized to employ the necessary additional personnel to serve and be designated as "license examiners." The commissioner shall employ such other technical, professional and clerical assistants as may be needed to conduct the work of the bureau. However, not later than July 1, 2021, the commissioner shall not employ an active-service Highway Patrol Officer in the bureau.

HISTORY: Codes, 1942, § 8119; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1946, ch. 420, § 9; Laws, 1948, ch. 343, § 7; Laws, 1950, ch. 407, § 4; Laws, 1952, ch. 357, § 3; Laws, 1960, ch. 338, § 2; Laws, 1962, ch. 517; Laws, 1973, ch. 410, § 1; Laws, 1989, ch. 482, § 20; Laws, 1995, ch. 421, § 1; Laws, 2001, ch. 548, § 1; Laws, 2002, ch. 326, § 2, eff from and after July 1, 2002; Laws, 2020, ch. 477, § 1, eff from and after passage (approved July 8, 2020).

Cross References — Salaries of employees of highway safety patrol, see § 45-3-7.

§ 63-1-15. Designation and duties of drivers' license examiners.

The Commissioner of Public Safety shall be authorized to designate persons who may act as examiners for license or instruction permits.

It shall be the duty of the license examiners to forward to the commissioner all applications rejected or approved in accordance with such rules and regulations as may be prescribed by the commissioner.

HISTORY: Codes, 1942, §§ 8099, 8102; Laws, 1938, 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, § 7; Laws, 1948, ch. 343, § 5; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, § 3; Laws, 1958, ch. 493; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1985, ch. 376, § 8; Laws, 1989, ch. 482, § 21, eff from and after July 1, 1989.

Cross References — Motorcycle operator's license, see § 63-1-6.

§ 63-1-16. Department of Public Safety to furnish permanent license kiosk or examiner in each county seat at least one day per month if requested; kiosk equipment signage; Driver Services Division website to include online tutorial videos for use of website and "Wait Anywhere Appointment" program.

(1) The Department of Public Safety shall, upon request of the board of supervisors, furnish either a permanent driver's license kiosk or a license examiner at a location in each county seat for at least one (1) day every month to conduct licensing examinations, road tests and renewals. It is the option of the board of supervisors so requesting to choose either the permanent driver's license kiosk or a license examiner. The county shall furnish the office, heating and cooling, phone service and Internet connectivity at the location for the kiosk or license examiner.

(2) Driver's license kiosks shall be equipped with printers on location at all kiosk locations in the state for the purpose of printing all kiosk documents, cards and other printouts on site.

(3) At each driver's license location in the state, there shall be location signs prominently displayed providing for required information for the various licenses, cards and other services.

(4) On the Driver Services Division's website, there shall be tutorial videos linked to online procedures to help clearly illustrate how to use the website.

(5) On the Driver Services Division's website, the "Wait Anywhere Appointment," or its equivalent or successor program, shall be made available to use for all driver's license locations in the state.

HISTORY: Laws, 2013, ch. 517, § 3, eff from and after July 1, 2013; Laws, 2020, ch. 477, § 2, eff from and after passage (approved July 8, 2020).

§ 63-1-17. Maintenance of records relating to licenses and permits.

As the license examiners file their statements showing the serial numbers of licenses and temporary driving permits issued pursuant to this article during the preceding month, the commissioner shall keep a record of all licenses and permits issued pursuant to this article by such examiners, a record of all licenses and permits revoked, a record of all perforated sections mailed to him by the trial judges, and such other information that he deems necessary to carry out the provisions of this article.

HISTORY: Codes, 1942, § 8118; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 9; Laws, 1989, ch. 482, § 22, eff from and after July 1, 1989.

Cross References — Revocation and suspension of licenses generally, see §§ 63-1-51 to 63-1-55.

§ 63-1-19. Application for license; notification of change of address or name by licensee; registration with Selective Service for certain males.

(1)(a) Every applicant for a license or permit issued pursuant to this article, or for renewal of such license or permit, shall file an application for such license, permit or renewal, on a form provided by the Department of Public Safety, with the commissioner or an official license examiner of the department. All persons not holding valid, unexpired licenses issued in this state shall be required to secure an original license, except those specifically exempted from licensing under Section 63-1-7. The application shall state the name, date of birth, the social security number of the applicant unless the applicant is not a United States citizen and does not possess a social security number issued by the United States government, sex, race, color of eyes, color of hair, weight, height and residence address, and whether or not the applicant's privilege to drive has been suspended or revoked at any time, and, if so, when, by whom, and for what cause, and whether any previous application by him has been denied, and whether he has any physical defects which would interfere with his operating a motor vehicle safely upon the highways.

(b) Every applicant for an original license shall show proof of domicile in this state. The commissioner shall promulgate any rules and regulations necessary to enforce this requirement and shall prescribe the means by which an applicant for an original license may show domicile in this state. Proof of domicile shall not be required of applicants under eighteen (18) years of age.

(c) Unless the applicant is not a United States citizen and does not possess a social security number issued by the United States government, each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

(2) No person who is illegally in the United States or Mississippi shall be issued a license. The application of a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall state the name, date of birth, sex, race, color of eyes, color of hair, weight, height and residence address, and whether or not the applicant's privilege to drive has been suspended or revoked at any time, and, if so, when, by whom, and for what cause, and whether any previous application by him has been denied, and whether he has any physical defects which would interfere with his operating a motor vehicle safely upon the highways. The commissioner shall adopt and promulgate such rules and regulations as he deems appropriate requiring additional documents, materials, information or physical evidence to be provided by the applicant as may be necessary to establish the identity of the applicant and that the applicant is not present in the United States or the State of Mississippi illegally.

(3) Whenever a person who has applied for or who has been issued a license or permit under this article moves from the address listed in the

application or on the permit or license, or whenever the name of a licensee changes by marriage or otherwise, such person, within thirty (30) days thereafter, shall notify, in writing, the Department of Public Safety, Driver Services Division, and inform the department of his or her previous address and new address and of his or her former name and new name. The department shall not change the name of a licensee or permittee on his or her license or permit unless the applicant appears in person at an office of the department and provides a certified copy of his or her marriage license, court order, birth certificate or divorce decree changing the licensee's or permittee's name.

(4)(a) Any male who is at least eighteen (18) years of age but less than twenty-six (26) years of age and who applies for a permit or license or a renewal of a permit or license under this chapter shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 USCS Section 3802, as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicant to the Selective Service System. The applicant's submission of the application shall serve as an indication that the applicant either has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration. The commissioner shall notify the applicant on, or as a part of, the application that his submission of the application will serve as his consent to registration with the Selective Service System, if so required. The commissioner also shall notify any male applicant under the age of eighteen (18) that he will be registered upon turning age eighteen (18) as required by federal law.

HISTORY: Codes, 1942, § 8094; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1956, ch. 378, § 1; Laws, 1985, ch. 376, § 10; Laws, 1997, ch. 588, § 19; Laws, 1999, ch. 397, § 2; Laws, 2002, ch. 388, § 1; Laws, 2002, ch. 584, § 3; Laws, 2005, ch. 541, § 8, eff from and after July 1, 2005.

Joint Legislative Committee Note — Section 1 of ch. 388, Laws, 2002, eff from and after September 1, 2002 (approved March 19, 2002), amended this section. Section 3 of ch. 584, Laws, 2002, eff from and after September 1, 2002 (approved April 11, 2002), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 584, Laws, 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference in subsection (4)(a) by substituting "Section 3 of the Military Selective Service Act, 50 USCS Section 3802" for "Section 3 of the Military Selective Service Act, 50 USCS Appx 451 et seq." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Editor's Notes — Laws of 1990, Chapter 588, § 22, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions were not implemented. The text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Requirement that an application for an identification card issued by the department of public safety contain the information required on a driver's license application, see § 45-35-5.

Motorcycle operator's license, see § 63-1-6.

Federal Aspects— Registration in compliance with the requirements of § 3 of the Military Selective Service Act, see 50 USCS § 3801 et seq.

RESEARCH REFERENCES

ALR.

Validity of state statutes, regulations, or other identification requirements restricting or denying driver's licenses to illegal aliens. 16 A.L.R.6th 131.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 103.

CJS.

60 C.J.S., Motor Vehicles §§ 339-343.

§ 63-1-21. Temporary permits.

(1) To obtain a new or original Class R or Class D license, every applicant other than a person holding a valid out-of-state license shall first obtain a learner's permit, successfully complete the examination provided for in Section 63-1-33, and pay the learner's permit fee and examination fee prescribed in Section 63-1-43.

(2) A learner's permit entitles the holder, if the permit is in his immediate possession, to drive a motor vehicle other than a motorcycle on the highways of the State of Mississippi only when accompanied by a licensed operator who is at least twenty-one (21) years of age and who is actually occupying the seat beside the driver. A learner's permit may be issued to any applicant who is at least fifteen (15) years of age and shall be valid for a period of two (2) years from the date of issue.

(3) A regular license holder under the age of eighteen (18) shall be allowed unsupervised driving from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:30 p.m. Friday and Saturday, and shall be allowed unsupervised driving any time for a person traveling directly to or from work or other educational or extracurricular activity. At all other times for the first six (6) months as a regular license holder, the regular license holder under the age of eighteen (18) must be supervised by a parent, guardian or other person aged twenty-one (21) years or older who holds a valid driver's license under this article and who is actually occupying the seat beside the driver.

HISTORY: Codes, 1942, § 8095; Laws, 1938, ch. 143; Laws, 1956, ch. 378, § 2; Laws, 1964, ch. 454; Laws, 1966, ch. 570, § 1; Laws, 1985, ch. 376, § 2; Laws, 1994, ch. 588, § 6; Laws, 2000, ch. 624, § 3; Laws, 2009, ch. 488, § 3; Laws, 2011, ch. 467, § 1; Laws, 2013, ch. 489, § 3; Laws, 2014, ch. 424, § 10, eff from and after Oct. 1, 2014; Laws, 2021, ch. 414, § 5, eff from and after passage (approved April 5, 2021); Laws, 2021, ch. 464, § 3, eff from and after passage (approved April 16, 2021).

Joint Legislative Committee Note — Section 5 of Chapter 414, Laws of 2021, effective upon passage (approved April 5, 2021), amended this section. Section 3 of Chapter 464, Laws of 2021, effective upon passage (approved April 16, 2021) also amended this section. As set out above, this section reflects the language of Section 3 of Chapter 464, which contains language that specifically provides that it supersedes § 63-1-21 as amended by Chapter 414, Laws of 2021.

Amendment Notes — The first 2021 amendment (ch. 414), effective April 5, 2021, in (1), deleted "or intermediate driver's" following "Class D" and made a related change; and in (3), in the first sentence, substituted "A regular license holder under the age of eighteen (18) shall be allowed" for "An intermediate license allows" and "Saturday, and shall be allowed' for "Saturday, and allows," inserted "or other educational or extracurricular activity" and substituted "for the first six (6) months...under the age of eighteen (18) must" for "the intermediate licensee must," and deleted former (b), which read: "The fee for issuance of an intermediate license shall be as prescribed in Section 63-1-43."

The second 2021 amendment (ch. 464), effective April 16, 2021, in (1), deleted "or intermediate driver's" following "Class D" and made a related change; deleted "regular" preceding "learner's permit" twice in (1) and twice in (2); and in (3), in the first sentence, substituted "A regular license holder under the age of eighteen (18) shall be allowed" for "An intermediate license allows" and "Saturday, and shall be allowed" for "Saturday, and allows," inserted "or other educational or extracurricular activity" and substituted "for the first six (6) months...under the age of eighteen (18) must" for "the intermediate licensee must," and deleted former (b), which read: "The fee for issuance of an intermediate license shall be as prescribed in Section 63-1-43."

Cross References — Issuance, validity, and expiration of temporary permit for student enrolled in driver education and training program, see § 37-25-7.

License of motorcycle operator, see § 63-1-6.

JUDICIAL DECISIONS

ANALYSIS

1. Grandparent as licensee.
2. Construction.

1. Grandparent as licensee.

Grant of summary judgment in favor of the grandparents was proper where they were not vicariously liable and did not negligently supervise their grandchild when he was driving the grandfather's vehicle with a learner's permit and struck another driver because there was no Mississippi case law that extended the special duty recognized between the parent and child to other members of the family; Miss. Code Ann. § 63-1-21 only required that the licensee, in this case, the grandmother, be seated in the front passenger seat and over the age of 21. Warren v. Glascoe, 852 So. 2d 634, 2003 Miss. App. LEXIS 68 (Miss. Ct. App. 2003), aff'd, 880 So. 2d 1034, 2004 Miss. LEXIS 784 (Miss. 2004).

2. Construction.

Former Miss. Code Ann. § 63-1-21 did not impute the negligence of a permittee (under a learner's permit) to the licensed driver who was occupying the seat beside the permittee. The 2000 legislative amendments to § 63-1-21, specifically

Miss. Code Ann. § 63-1-21(3) (2000), did not exist at the time of the accident in the case and thus were not applicable to impose any duty of supervision or liability upon the grandparent who was allowing the grandson to operate the grandparent's vehicle. Warren v. Glascoe, 880 So. 2d 1034, 2004 Miss. LEXIS 784 (Miss. 2004).

RESEARCH REFERENCES

CJS.
60 C.J.S., Motor Vehicles § 327.

§ 63-1-23. Signature and verification of application for license of person under seventeen years of age by parents or other responsible person.

The application of any person under the age of seventeen (17) years for a temporary driving permit or license issued pursuant to this article shall be signed and verified before a person authorized to administer oaths by both the father and mother of the applicant, if both are living and have custody of him, or in the event neither parent is living then by the person or guardian having such custody or by an employer of him, or in the event there is no guardian or employer then by any other responsible person who is willing to assume the obligation imposed under Section 63-1-25 upon a person signing the application of a minor.

HISTORY: Codes, 1942, § 8096; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 11; Laws, 2000, ch. 624, § 4, eff from and after July 1, 2000; Laws, 2021, ch. 414, § 6, eff from and after passage (approved April 5, 2021); Laws, 2021, ch. 464, § 11, eff from and after passage (approved April 16, 2021).

Joint Legislative Committee Note — Section 6 of Chapter 414, Laws of 2021, effective upon passage (approved April 5, 2021), amended this section. Section 11 of Chapter 464, Laws of 2021, effective upon passage (approved April 16, 2021) also amended this section. As set out above, this section reflects the language of Section 11 of Chapter 464, which contains language that specifically provides that it supersedes § 63-1-23 as amended by Chapter 414, Laws of 2021.

Section 1 of ch. 388, Laws, 2002, eff from and after September 1, 2002 (approved March 19, 2002), amended this section. Section 3 of ch. 584, Laws, 2002, eff from and after September 1, 2002 (approved April 11, 2002), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 584, Laws, 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes — Laws, 1990, Chapter 588, § 24, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions were not implemented. The text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Amendment Notes — The first 2021 amendment (ch. 414), effective April 5, 2021, deleted "intermediate license" following "temporary driving permit."

The second 2021 amendment (ch. 464), effective April 16, 2021, deleted "intermediate license" following "temporary driving permit."

Cross References — Motorcycle operator's license, see § 63-1-6.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Negligence of minor.

1. In general.

An automobile operator's license is a privilege granted by the state, in accepting which the motorist accepts all reasonable conditions imposed by the state. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

2. Negligence of minor.

Negligence of a minor, whose application for a driver's license was not signed by either his father or mother, in operating an automobile was not imputable to his parents even though the minor had exhibited his father's driver's license to the officer who examined the minor and took his application for a driver's license. Prewitt v. Walker, 231 Miss. 860, 97 So. 2d 514, 1957 Miss. LEXIS 575 (Miss. 1957).

OPINIONS OF THE ATTORNEY GENERAL

The term custody as used in this section means legal custody and therefore divorced parents who have joint legal custody would both have to sign the application of a person under the age of seventeen who is seeking a temporary driving permit, intermediate license or license. Busby, June 13, 2003, A.G. Op. 03-0288.

RESEARCH REFERENCES

ALR.

Construction and effect of statutes which make parent, custodian, or other person signing minor's application for vehicle operator's license liable for licensee's negligence or willful misconduct. 45 A.L.R.4th 87.

§ 63-1-25. Imputation of negligence or willful misconduct of driver under seventeen years of age to person signing application for license.

Except as otherwise provided in Section 63-1-27, any negligence or wilful misconduct of a minor under the age of seventeen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of such minor for a permit or license, which person shall be jointly or severally liable with such minor for any damages caused by such negligence or wilful misconduct.

HISTORY: Codes, 1942, § 8096; Laws, 1938, ch. 143.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Extent of liability-generally.
3. —Age of driver at time of accident.
4. —Application not signed by parents.
5. —Renewal license.
6. Limitations of actions.

1. In general.

Trial court properly granted summary judgment as to a passenger's claims of negligent entrustment against a driver's mother because the passenger's reliance on the driver's past alcohol and marijuana consumption was irrelevant to whether the mother was negligent in entrusting the vehicle to the driver since no issue of material fact existed that alcohol or other substances contributed to accident. the driver was not under the influence at the time of the accident. Garvin v. Tupelo Furniture Mkt., 127 So. 3d 197, 2013 Miss. LEXIS 650 (Miss. 2013).

Former Miss. Code Ann. § 63-1-21 did not impute the negligence of a permittee (under a learner's permit) to the licensed driver who was occupying the seat beside the permittee. The 2000 legislative amendments to § 63-1-21, specifically Miss. Code Ann. § 63-1-21(3) (2000), did not exist at the time of the accident in the case and thus were not applicable to impose any duty of supervision or liability upon the grandparent who was allowing the grandson to operate the grandparent's vehicle. Warren v. Glascoe, 880 So. 2d 1034, 2004 Miss. LEXIS 784 (Miss. 2004).

Grant of summary judgment in favor of the grandparents was proper where they were not vicariously liable under Miss. Code Ann. § 63-1-25, and did not negligently supervise their grandchild when he was driving the grandfather's vehicle with a learner's permit and struck another driver. Warren v. Glascoe, 852 So. 2d 634, 2003 Miss. App. LEXIS 68 (Miss. Ct. App. 2003), aff'd, 880 So. 2d 1034, 2004 Miss. LEXIS 784 (Miss. 2004).

No liability can arise under this statute absent negligent use or willful misconduct in use of vehicle; therefore, same reasoning that would exclude coverage for liability on basis of negligent entrustment and negligent supervision, would apply to claim of coverage for statutory liability under this section. Love v. McDonough, 758 F. Supp. 397, 1991 U.S. Dist. LEXIS 2968 (S.D. Miss.), aff'd, 947 F.2d 1486, 1991 U.S. App. LEXIS 27242 (5th Cir. Miss. 1991).

An automobile operator's license is a privilege granted by the state, in accepting which the motorist accepts all reasonable conditions imposed by the state. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

2. Extent of liability-generally.

One signing an application for an operator's certificate for a minor is liable only for damages occurring during the year for which the license was issued. Houston v. Holmes, 202 Miss. 300, 32 So. 2d 138, 1947 Miss. LEXIS 276 (Miss. 1947).

3. —Age of driver at time of accident.

Although parents signed their minor son's application for an automobile operator's license at a time when the son was under 17 years of age, they were not liable for damages allegedly caused by the son's negligent operation of an automobile at a time when the son was over 17 years of age. Carter v. Graves, 230 Miss. 463, 93 So. 2d 177, 1957 Miss. LEXIS 389 (Miss. 1957).

4. —Application not signed by parents.

Negligence of a minor, whose application for a driver's license was not signed by either his father or mother, in operating an automobile was not imputable to his parents even though the minor had exhibited his father's driver's license to the officer who examined the minor and took his application for a driver's license. Prewitt v. Walker, 231 Miss. 860, 97 So. 2d 514, 1957 Miss. LEXIS 575 (Miss. 1957).

Parent who signed application of minor son was not liable for property damages inflicted by son's negligent operation of automobile under renewal license for succeeding year, where application for such renewal by minor while still under the age of seventeen years was not signed by parent. Houston v. Holmes, 202 Miss. 300, 32 So. 2d 138, 1947 Miss. LEXIS 276 (Miss. 1947).

5. —Renewal license.

Parent who signed application of minor son was not liable for property damages inflicted by son's negligent operation of automobile under renewal license for succeeding year, where application for such renewal by minor while still under the age of seventeen years was not signed by parent. Houston v. Holmes, 202 Miss. 300, 32 So. 2d 138, 1947 Miss. LEXIS 276 (Miss. 1947).

6. Limitations of actions.

In an action by a plaintiff who was injured in automobile accident against parents who had enabled a minor to obtain driver's license by agreeing to accept responsibility for negligence of the minor in operating a motor vehicle and to be liable for damages resulting from misconduct, this was an action ex delicto rather than ex contractu and when brought in a federal court of Alabama, it was subject to Alabama's one year statute of limitations. Hickman v. Tullos, 121 F. Supp. 152, 1954 U.S. Dist. LEXIS 3388 (D. Ala. 1954).

RESEARCH REFERENCES

ALR.

State's liability to one injured by improperly licensed driver. 41 A.L.R.4th 111.

Construction and effect of statutes which make parent, custodian, or other person signing minor's application for vehicle operator's license liable for licensee's negligence or willful misconduct. 45 A.L.R.4th 87.

§ 63-1-27. Request for cancellation of minor's license by person signing application; release from liability for negligence or misconduct of minor.

Any person who has signed the application of a minor for a license may thereafter file with the commissioner a verified written request that the license of said minor so granted be canceled. Thereupon the commissioner shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from the liability imposed under Section 63-1-25 by reason of having signed such application on account of any subsequent negligence or wilful misconduct of such minor in operating a motor vehicle.

HISTORY: Codes, 1942, § 8097; Laws, 1938, ch. 143.

RESEARCH REFERENCES

ALR.

State's liability to one injured by improperly licensed driver. 41 A.L.R.4th 111.

Construction and effect of statutes which make parent, custodian, or other person signing minor's application for vehicle operator's license liable for licensee's negligence or willful misconduct. 45 A.L.R.4th 87.

Am. Jur.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 31, 32.

§ 63-1-29. Repealed.

Repealed by Laws, 1994, ch. 588, § 9, eff from and after September 1, 1995.

§ 63-1-29. [Codes, 1942, § 8098; Laws, 1938, ch. 143]

Editor's Notes — Former § 63-1-29 related to revocation of license upon death of person signing minor's application.

§ 63-1-31. Appeal from denial of application for license or temporary permit.

When a person is denied a license or any temporary driving permit after filing the proper application, he shall have the right within sixty (60) days thereafter to file a petition, in the county or circuit court in the county wherein the application was filed, praying for a hearing in the matter before the judge of the court in which the application is presented. The judge is hereby vested with jurisdiction to hear such matters forthwith within termtime or during vacation, upon five (5) days' written notice to the officer who refused to issue the license or any temporary driving permit. The hearing shall be conducted at a place as may suit the convenience of the court. On the hearing of the petition, testimony may be taken, and the court shall render judgment in the matter as it deems right and proper under the law and evidence.

HISTORY: Codes, 1942, § 8105; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 12; Laws, 2016, ch. 503, § 1, eff from and after Oct. 1, 2016.

JUDICIAL DECISIONS

1. In general.

A motorist whose operator's license was revoked following his conviction for driving while intoxicated was not entitled to proceed by writ of certiorari in the circuit court to review the action of the commissioner of public safety when he had previously failed to exhaust the administrative remedies provided by Code 1942, § 8105. Mississippi State Dep't of Public Safety v. Berry, 217 So. 2d 11, 1968 Miss. LEXIS 1249 (Miss. 1968).

OPINIONS OF THE ATTORNEY GENERAL

Although a justice court judge may not suspend the minimum fine upon a nolo contendere plea on a DUI, he does not have to impose a fine on first offense DUI if he imposes a jail sentence or attendance at a victim impact panel. Sartin, Dec. 9, 2005, A.G. Op. 05-0596.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 67.

§ 63-1-33. Examination of applicant for license or learner's permit; inspection of applicant's automobile; certification of successful completion of driver education and training program at secondary school in lieu of examination; off-duty members of Mississippi Highway Safety Patrol authorized to teach; certification by parent, teacher or guardian of student's motor vehicle operation proficiency in lieu of department's skills test.

(1) Except as otherwise provided under subsections (6) and (7) of this section, it shall be the duty of the license examiner, when application is made for an operator's license or learner's permit, to test the applicant's ability to read and understand road signs and to give the required signals as adopted by the National Advisory Committee on Uniform Traffic Control Devices and the American Association of Motor Vehicle Administrators.

(2) Except as otherwise provided under subsections (6) and (7) of this section, the commissioner shall have prepared and administer a test composed of at least ten (10) questions relating to the safe operation of a motor vehicle and testing the applicant's knowledge of the proper operation of a motor vehicle. Every examination shall ensure adequate knowledge on the part of the applicant as to school bus safety requirements.

(3) Prior to the administration of the test, the license examiner shall inspect the horn, lights, brakes, vehicle registration and proof of liability coverage of the motor vehicle which the applicant expects to operate while being tested, and if he finds that any of the aforementioned items are deficient, no license or endorsement shall be issued to the applicant until same have been repaired.

(4) An applicant for a Mississippi driver's license who, at the time of application, holds a valid motor vehicle driver's license issued by another state shall not be required to take a written test.

(5) Except as otherwise provided by Section 63-1-6, when application is made for an original motorcycle endorsement, the applicant shall be required to pass a written test which consists of questions relating to the safe operation of a motorcycle and a skill test similar to the "Motorcycle Operator Skill Test," which is endorsed by the American Association of Motor Vehicle Administrators. The commissioner may exempt any applicant from the skill test if the applicant presents a certificate showing successful completion of a course approved by the commissioner, which includes a similar examination of skills needed in the safe operation of a motorcycle.

(6) The Department of Public Safety shall accept the certification of successful completion of an individual's training in the knowledge and skills needed for the proper and safe operation of a motor vehicle from a driver education and training program at a secondary school that meets the standards of the State Board of Education, in lieu of the department administering the examination of the individual for the purpose of obtaining a driver's

license. The school may employ teachers duly certified by the Department of Education to teach in such a program. In addition, off-duty members of the Mississippi Highway Safety Patrol shall be authorized to teach in such a program without having to obtain a teaching certificate from the Department of Education. Instructors will be considered employees of the school, not of the Driver License Examining Bureau. The commissioner and the State Board of Education shall jointly promulgate rules and regulations for the administration of this subsection.

(7) The commissioner shall develop an affidavit whereby a parent, teacher or guardian may certify that he or she has witnessed a student operate a motor vehicle for at least fifty (50) hours and attest to the student's proficiency in the proper and safe operation of a motor vehicle and the Department of Public Safety shall accept such in lieu of a skills test conducted by the department.

HISTORY: Codes, 1942, § 8100; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 3; Laws, 1998, ch. 352, § 1; Laws, 1999, ch. 393, § 2; Laws, 2000, ch. 614, § 1; Laws, 2010, ch. 346, § 1; Laws, 2011, ch. 481, § 5; Laws, 2014, ch. 424, § 20; Laws, 2015, ch. 417, § 5, eff from and after July 1, 2015; Laws, 2020, ch. 477, § 5, eff from and after passage (approved July 8, 2020); Laws, 2021, ch. 464, § 12, eff from and after passage (approved April 16, 2021).

Editor's Notes — Chapter 481, Laws of 2011, which amended this section, is known as "Nathan's Law."

Amendment Notes — The 2021 amendment, effective April 16, 2021, in (1), deleted "regular" preceding "learner's permit"; and in (7), substituted "the student's" for "their."

Cross References — License of motorcycle operator, see § 63-1-6.

Requirements for temporary driving permits, see § 63-1-21.

Video-taped instructional material to assist reading impaired applicants to prepare for driver's examination, see § 63-1-34.

JUDICIAL DECISIONS

1. Proper operation of vehicle.

Grant of summary judgment in favor of the grandparents was proper where they were not vicariously liable and did not negligently supervise their grandchild when he was driving the grandfather's vehicle with a learner's permit and struck another driver because the grandchild was operating the vehicle in accordance with directives required of him pursuant to Miss. Code Ann. § 63-1-33. Warren v. Glascoe, 852 So. 2d 634, 2003 Miss. App. LEXIS 68 (Miss. Ct. App. 2003), aff'd, 880 So. 2d 1034, 2004 Miss. LEXIS 784 (Miss. 2004).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 115.

§ 63-1-34. Provision of video-taped instructional material to assist reading impaired applicants in preparing for driver's license examinations.

From and after January 1, 1991, the Mississippi Authority for Educational Television shall prepare and the Commissioner of Public Safety shall make available for loan to applicants for driving permits and licenses under this article and under Article 5 of this chapter, who are reading impaired, video tapes of instructional material designed to assist such applicants in preparing for driver's license examinations. The commissioner shall be authorized to charge and collect a fee from any person to whom any such video tape is loaned, such fee to serve as security for the return of the video tape and which fee shall be refunded to the person upon return of the video tape to the commissioner. Such fee shall be in an amount as the commissioner determines necessary to defray the actual cost to the commissioner in replacing the video tape but shall not exceed the amount of the fee provided by law to be paid for the issuance of the class of driver's license for which the person is applying. The video tape shall be returned, in good working order, to the location that such tape was borrowed in order for the individual to receive his security refund. In the event such tape is not returned within thirty (30) days from time of rental all security fees will be forfeited to the Department of Public Safety. Such security funds and all forfeited fees shall be placed in a separate interest-bearing account known as the "Driver License Educational Fund for the Reading Impaired." All forfeited security fees shall be used to replace unreturned tapes and to offset the cost of this program.

HISTORY: Laws, 1990, ch. 319, § 1; Laws, 2009, ch. 560, § 29, eff from and after July 1, 2009.

§ 63-1-34.1. Issuance of limited driver's license for persons using bioptic telescopic lenses; rehabilitation permit.

(1) The Commissioner of Public Safety may issue a limited driver's license for persons using bioptic telescopic lenses. The license shall be valid for one (1) year from the date of issuance. The commissioner may require the reevaluation of a licensee before the reissuance of a limited driver's license.

(2) The commissioner shall prepare and administer a test for the central and peripheral vision of persons using bioptic telescopic lenses. If the person passes the test and is otherwise qualified, the person may receive a license under this section.

(3) The commissioner may issue a one-year driving rehabilitation permit subject to such restrictions as the commissioner may require.

(4) The fee for a license or permit issued under this section shall be the fee required for one-year licenses under Section 63-1-43, Mississippi Code of 1972.

(5) The commissioner may impose restrictions on any license or permit issued under this section and may issue rules and regulations governing such licenses and permits.

HISTORY: Laws, 1999, ch. 393, § 1, eff from and after July 1, 1999.

§ 63-1-35. Form of license; use of Social Security Number of licensee; photograph of licensee; renewal of license by electronic means; registered sex offender's license to identify licensee as sex offender; designation as veteran on license upon request of honorably discharged veteran; electronic format for license or permit; penalty for provision of false documents.

(1) The Commissioner of Public Safety shall prescribe the form of license issued pursuant to this article which shall, among other features, include a driver's license number assigned by the Department of Public Safety. A licensee shall list his social security number with the department which shall cross reference the social security number with the driver's license number for purposes of identification. Additionally, each license shall bear a full-face color photograph of the licensee in such form that the license and the photograph cannot be separated. The photograph shall be taken so that one (1) exposure will photograph the applicant and the application simultaneously on the same film. The department shall use a process in the issuance of a license with a color photograph that shall prevent as nearly as possible any alteration, counterfeiting, duplication, reproduction, forging or modification of the license or the superimposition of a photograph without ready detection. The photograph shall be replaced by the department at the time of renewal. Drivers' licenses, including photographs appearing thereon, may be renewed by electronic means according to rules and regulations promulgated by the commissioner in conformity to Section 27-104-33.

(2) The commissioner shall prescribe the form of license issued pursuant to this article to licensees who are not United States citizens and who do not possess a social security number issued by the United States government. The license of such persons shall include a number and/or other identifying features.

(3) Any new, renewal or duplicate driver's license, temporary driving permit or commercial driver's license issued to a person required to register as a sex offender pursuant to Section 45-33-25 shall bear a designation identifying the licensee or permittee as a sex offender.

(4) The commissioner is authorized to provide the new, renewal or duplicate driver's license, temporary driving permit or commercial driver's license to any honorably discharged veteran as defined in Title 38 of the United States Code, and such license or permit shall exhibit the letters "Vet" or any other mark identifying the person as a veteran. The veteran requesting the "Vet" designation shall present his DD-214, Military Retiree Identification Card, United States Department of Veterans Affairs Medical Identification Card, United States Department of Veterans Affairs Identification Card or National Guard Form NGB 22. The veteran requesting the "Vet" designation may present his DD-214, Military Retiree Identification Card, United States

Department of Veterans Affairs Medical Identification Card, United States Department of Veterans Affairs Identification Card or National Guard Form NGB 22 in person at the Mississippi Department of Public Safety Driver's License Station.

(5) Not later than July 1, 2021, the commissioner shall develop and implement a driver's license or driving permit in electronic format as an additional option for license or permit holders. Acceptable electronic formats include display of electronic images on a cellular phone or any other type of electronic device.

(6) If false documents are provided by an individual for purposes of obtaining a veteran driver's license, such action shall be considered fraudulent use of identity under Section 97-19-85, Mississippi Code of 1972, and shall be punishable, upon conviction, as a felony pursuant to the provisions of that section.

HISTORY: Codes, 1942, § 8103; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1968, ch. 540, § 1; Laws, 1981, ch. 453, § 1; Laws, 1985, ch. 376, § 13; Laws, 1996, ch. 466, § 1; Laws, 2001, ch. 535, § 1; Laws, 2002, ch. 584, § 6; Laws, 2007, ch. 392, § 16; Laws, 2011, ch. 467, § 2; Laws, 2012, ch. 561, § 2, eff from and after passage (approved May 25, 2012); Laws, 2020, ch. 477, § 3, eff from and after passage (approved July 8, 2020); Laws, 2021, ch. 414, § 7, eff from and after passage (approved April 5, 2021); Laws, 2021, ch. 464, § 13, eff from and after passage (approved April 16, 2021); Laws, 2021, ch. 416, § 1, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 7 of Chapter 414, Laws of 2021, effective from and after passage (approved April 5, 2021), amended this section. Section 1 of Chapter 416, Laws of 2021, effective from and after July 1, 2021 (approved April 5, 2021), and Section 13 of Chapter 464, Laws of 2021, effective from and after passage (approved April 16, 2021), also amended this section. Section 13 of Chapter 464, Laws of 2021, contains language that specifically provides that it supersedes § 63-1-35 as amended by Chapter 414, Laws of 2021. As set out above, this section reflects the language of Section 1 of Chapter 416, Laws of 2021, and Section 13 of Chapter 464, Laws of 2021, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 20, 2021, meeting of the Committee.

Amendment Notes — The first 2021 amendment (ch. 414), effective April 5, 2021, deleted "intermediate license" following "temporary driving permit" in (3) and (4).

The second 2021 amendment (ch. 416), in (4), in the second sentence, substituted "DD-214, Military Retiree Identification Card, United States Department of Veterans Affairs Medical Identification Card, United States Department of Veterans Affairs Identification Card or National Guard Form NGB 22" for "or equivalent document that includes a notation from the State Veterans Affairs Board that the applicant is a veteran," and added the last sentence; and added (6).

The third 2021 amendment (ch. 464), effective April 16, 2021, deleted "intermediate license" following "temporary driving permit" in (3) and (4).

Cross References — Registration of sex offenders generally, see §§ 45-33-1 et seq.

Motorcycle operator's license, see § 63-1-6.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

The Commissioner of Public Safety may adopt a method to assign an alternate identifier for a driver's license for an individual who cannot obtain a Social Security number from the Social Security Administration. Head, September 14, 1998, A.G. Op. #98-0553.

§ 63-1-37. Issuance of duplicate license.

If a license or learner's permit issued under the provisions of this article is lost or destroyed, the licensee may obtain a duplicate copy by paying the fee prescribed in Section 63-1-43. The license or permit shall be marked "Duplicate."

HISTORY: Codes, 1942, § 8104; Laws, 1938, ch. 143; Laws, 1956, ch. 378, § 4; Laws, 1984, ch. 349; Laws, 1985, ch. 376, § 14 eff from and after July 1, 1985; Laws, 2001, ch. 535, § 2; Laws, 2002, ch. 584, § 1; Laws, 2011, ch. 467, § 3; Laws, 2014, ch. 424, § 11, eff from and after Oct. 1, 2014; Laws, 2021, ch. 464, § 14, eff from and after passage (approved April 16, 2021).

Amendment Notes — The 2021 amendment, effective April 16, 2021, deleted "regular" preceding "learner's permit."

Cross References — Motorcycle operator's license, see § 63-1-6.

Criminal offense of applying for duplicate license at time when license has been posted for appearance in court, see § 63-9-25.

RESEARCH REFERENCES

CJS.

60 C.J.S., Motor Vehicles §§ 340-343.

§ 63-1-39. Signatures on license.

No license issued pursuant to this article shall be valid under the provisions of this article until it has been signed by the applicant.

HISTORY: Codes, 1942, § 8101; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1985, ch. 376, § 15; Laws, 2015, ch. 436, § 1, eff from and after passage (approved Apr. 13, 2015).

Cross References — Motorcycle operator's license, see § 63-1-6.

§ 63-1-41. Possession and display of license upon demand.

Every licensee shall have the required license in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a justice court judge, a peace officer or license examiner or other authorized employee of the commissioner. However, no person charged with violating this section shall be convicted if he produces in court a license theretofore issued to him and valid at the time of his arrest.

HISTORY: Codes, 1942, § 8108; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 16, eff from and after July 1, 1985.

Cross References — Motorcycle operator's license, see § 63-1-6.
Deposit of driver's license in lieu of bail in traffic cases, see § 63-9-25.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Persons who have authority under statute.
3. Authority to stop vehicle.

1. In general.

This provision is a valid exercise of the police power. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

2. Persons who have authority under statute.

A person never formally appointed in writing as required by law who was employed by a sheriff as a deputy, had signed an oath of office, and had acted for a long time as a deputy in uniform without challenge, had the right to arrest for motor vehicle violations and to demand driver's licenses. United States v. Williams, 416 F.2d 4, 1969 U.S. App. LEXIS 10746 (5th Cir. Miss. 1969), cert. denied, 397 U.S. 910, 90 S. Ct. 908, 25 L. Ed. 2d 91, 1970 U.S. LEXIS 2991 (U.S. 1970), cert. denied, 397 U.S. 968, 90 S. Ct. 1008, 25 L. Ed. 2d 262, 1970 U.S. LEXIS 2728 (U.S. 1970).

3. Authority to stop vehicle.

This section [Code 1942, § 8108], authorizes, by implication, officers to stop a car and require exhibition of a driver's license; but this right must be exercised in good faith for the purpose of determining whether the operator is licensed, and not as a blind search without warrant. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

The stopping of cars and detaining drivers momentarily for the purpose of checking the driver's license does not constitute an arrest warranting an incidental search. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

One who evades a road block set up to check driver's licenses may be pursued by the officer in good faith for the purpose of ascertaining whether he has a license. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

RESEARCH REFERENCES

ALR.

Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate. 6 A.L.R.3d 506.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 105, 106, 259.

CJS.

60 C.J.S., Motor Vehicles §§ 347, 348.

61A C.J.S., Motor Vehicles §§ 1631, 1748.

§ 63-1-43. Fees for licenses generally.

(1) The commissioner shall charge and collect the following fees:

(a) Fees to which the card stock fee authorized in Section 45-1-21 shall be added:

Class R original or renewal four-year license authorized in Section 63-1-5	$18.00
Class R original or renewal eight-year license authorized in Section 63-1-5	$36.00
Class D original or renewal four-year license authorized in Section 63-1-47	$23.00
Class D original or renewal eight-year license authorized in Section 63-1-47	$46.00
Four-year Identification Card authorized in Section 45-35-7	$11.00
Eight-year Identification Card authorized in Section 45-35-7	$22.00
Eight-year Identification Card for the blind authorized in Section 45-35-7	$11.00
Four-year Disability Identification Card authorized in Section 45-35-53	$11.00
Regular Learner's Permit authorized in Section 63-1-21	$ 1.00
Duplicate Identification Card or Disability Identification Card	$ 5.00
Duplicate Class R or Class D license authorized in Section 63-1-37	$ 5.00
Class A, B or C Commercial driver's license authorized in Section 63-1-208	$48.00
CDL Learner's Permit authorized in Section 63-1-208	$10.00
Duplicate CDL or CDL learner's permit	$ 5.00
Ignition-Interlock-Restricted License authorized in Section 63-11-31	$50.00

(b) Driver services fees to which the card stock fee authorized in Section 45-1-21 is not added:

Temporary Motorcycle Permit	$ 1.00
Four-year or eight-year Motorcycle Endorsement	$ 5.00
Late Renewal Fee	$ 1.00
Four-year Identification Card upon medical reason for surrender of a driver's license as authorized in Section 45-35-7 (one (1) time only)	No fee
Hazardous Materials Background Check (federal)	$63.00
Hazardous Materials Background Check (state)	$37.00
CDL Application Fee	$25.00
CDL Endorsements:	
Tanker Endorsement	$ 5.00
Doubles/Triples Endorsement	$ 5.00
Passenger Endorsement	$ 5.00
Hazardous Materials Endorsement	$ 5.00
School Bus Endorsement	$ 5.00

(c) In addition to the fees required in this section, an applicant may contribute an additional One Dollar ($1.00) which shall be deposited into the Statewide Litter Prevention Fund. The applicant shall be informed that he may contribute an additional One Dollar ($1.00) which shall be deposited into the Statewide Litter Prevention Fund and shall be expended solely for the purpose of funding litter prevention projects or litter education programs, as recommended by the Statewide Litter Prevention Program of Keep Mississippi Beautiful, Inc.

(d) Starting January 1, 2021, for any original or renewal license for which the fee is greater than Ten Dollars ($10.00), if the applicant brings all required documentation but does not receive his or her license within two and one-half (2-½) hours of entering and remaining at the license station, Ten Dollars ($10.00) shall be deducted from the total amount owed for the license.

(2) All originals and renewals of operators' licenses shall be in compliance with Section 63-1-47.

(1) The commissioner shall charge and collect the following fees:

(a) Fees to which the card stock fee authorized in Section 45-1-21 shall be added:

Class R original or renewal four-year license authorized in Section 63-1-5	$18.00
Class R original or renewal eight-year license authorized in Section 63-1-5	$36.00
Class D original or renewal four-year license authorized in Section 63-1-47	$23.00
Class D original or renewal eight-year license authorized in Section 63-1-47	$46.00
Four-year Identification Card authorized in Section 45-35-7	$11.00
Eight-year Identification Card authorized in Section 45-35-7	$22.00
Eight-year Identification Card for the blind authorized in Section 45-35-7	$11.00
Four-year Disability Identification Card authorized in Section 45-35-53	$11.00
Learner's Permit authorized in Section 63-1-21	$ 1.00
Duplicate Identification Card or Disability Identification Card	$ 5.00
Duplicate Class R or Class D license authorized in Section 63-1-37	$ 5.00
Class A, B or C Commercial driver's license authorized in Section 63-1-208	$48.00
CDL Learner's Permit authorized in Section 63-1-208	$10.00
Duplicate CDL or CDL learner's permit	$ 5.00
Ignition-Interlock-Restricted License authorized in Section 63-11-31	$50.00

(b) Driver services fees to which the card stock fee authorized in Section 45-1-21 is not added:

Temporary Motorcycle Permit	$ 1.00
Four-year or eight-year Motorcycle Endorsement	$ 5.00
Late Renewal Fee	$ 1.00

Four-year Identification Card upon medical reason forsurrender of a driver's license as authorized in Section 45-35-7 (one (1) time only)	No fee
Hazardous Materials Background Check (federal)	$63.00
Hazardous Materials Background Check (state)	$37.00
CDL Application Fee	$25.00
CDL Endorsements:	
Tanker Endorsement	$ 5.00
Doubles/Triples Endorsement	$ 5.00
Passenger Endorsement	$ 5.00
Hazardous Materials Endorsement	$ 5.00
School Bus Endorsement	$ 5.00

(c) In addition to the fees required in this section, an applicant may contribute an additional One Dollar ($1.00) which shall be deposited into the Statewide Litter Prevention Fund. The applicant shall be informed that he may contribute an additional One Dollar ($1.00) which shall be deposited into the Statewide Litter Prevention Fund and shall be expended solely for the purpose of funding litter prevention projects or litter education programs, as recommended by the Statewide Litter Prevention Program of Keep Mississippi Beautiful, Inc.

(d) Starting January 1, 2021, for any original or renewal license for which the fee is greater than Ten Dollars ($10.00), if the applicant brings all required documentation but does not receive his or her license within two and one-half (2-½) hours of entering and remaining at the license station, Ten Dollars ($10.00) shall be deducted from the total amount owed for the license.

(2) All originals and renewals of operators' licenses shall be in compliance with Section 63-1-47.

Codes, 1942, § 8102; Laws, 1938, ch. 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, § 7; Laws, 1948, ch. 343, § 5; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, § 3; Laws, 1958, ch. 493; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1973, ch. 383, § 1; Laws, 1981, ch. 453, § 2; Laws, 1985, ch. 376, § 4; Laws, 1989, ch. 482, § 23; Laws, 1992, ch. 469, § 1; Laws, 1994, ch. 588, § 8; Laws, 2001, ch. 535, § 3; Laws, 2002, ch. 584, § 5; Laws, 2009, ch. 560, § 30; Laws, 2010, ch. 423, § 1; Laws, 2011, ch. 468, § 2; Laws, 2012, ch. 433, § 1; Laws, 2012, ch. 483, § 1; Laws, 2013, ch. 489, § 4; Laws, 2014, ch. 424, § 12, eff from and after Oct. 1, 2014; Laws, 2020, ch. 477, § 6, eff from and after passage (approved July 8, 2020); Laws, 2021, ch. 414, § 8, eff from and after passage (approved April 5, 2021).

Joint Legislative Committee Note — Section 1 of ch. 433, Laws of 2012, effective July 1, 2012 (approved April 19, 2012), amended this section. Section 1 of ch. 483, Laws of 2012, effective from and after July 1, 2009 (approved April 23, 2012), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on compilation, Revision and Publication of Legislation authority to integrate amendments so that all version of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012 meeting of the Committee.

Section 8 of Chapter 414, Laws of 2021, effective upon passage (approved April 5, 2021), amended this section. Section 15 of Chapter 464, Laws of 2021, effective upon passage (approved April 16, 2021) also amended this section. As set out above, this section reflects the language of Section 15 of Chapter 464, which contains language that specifically provides that it supersedes § 63-1-43 as amended by Chapter 414, Laws of 2021.

Editor's Notes — Laws of 2014, ch. 512, § 5 provides:

"SECTION 5. The State Fiscal Officer shall transfer all of the funds that are deposited into the Ignition Interlock Device Fund during fiscal year 2015 into the Drug Court Fund. This section shall stand repealed on July 1, 2015."

Amendment Notes — The first 2021 amendment (ch. 414), effective April 5, 2021, in (1)(a), deleted "Intermediate license authorized in Section 63-1-21...$5.00" following the entry for "Duplicate Identification Card or Disability Identification Card."

The second 2021 amendment (ch. 464), effective April 16, 2021, in (1)(a), deleted "Regular" preceding "Learner's Permit authorized in Section 63-1-21," and deleted "Intermediate license authorized in Section 63-1-21...$5.00" following the entry for "Duplicate Identification Card or Disability Identification Card."

Cross References — License of motorcycle operator, see § 63-1-6.

Requirements for temporary driving permits, see § 63-1-21.

Allocation of portion of certain fees charged under this section for licenses, to special fund for purchase of State Highway Safety Patrol cars, equipment, and weapons, see § 63-1-45.

Fee for reinstatement of license subsequent to suspension, revocation or cancellation, see § 63-1-46.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Private commercial carrier by motor vehicle.

1. In general.

Statute which provides that operator of a private commercial carrier must obtain a commercial driver's license, applies uniformly to all persons regularly so engaged as operators of private commercial carriers and the statute is constitutional. Lumpkin v. Birdsong, 212 Miss. 616, 55 So. 2d 230, 1951 Miss. LEXIS 491 (Miss. 1951).

2. Private commercial carrier by motor vehicle.

A person employed by a railroad as an operator or driver of one of the railroad's motor trucks in the transportation of other employees and tools to and from their work, was, in respect to the use of such truck, a private commercial carrier by motor vehicle within the statute requiring driver's license, in that it was used in the furtherance of the commercial enterprise of railroading. Lumpkin v. Birdsong, 212 Miss. 616, 55 So. 2d 230, 1951 Miss. LEXIS 491 (Miss. 1951).

RESEARCH REFERENCES

CJS.

60 C.J.S., Motor Vehicles §§ 344-346.

§ 63-1-45. Maintenance of records relating to application forms and fees; audit of forms and funds; receipt for fees; effect of dishonor of check; disposition of fees.

(1) License examiners shall keep a complete record of all funds received from applicants upon forms to be prescribed and furnished by the department out of the operating funds of the department. Application forms shall be printed in book form and serially numbered and in such form that the original thereof may be transmitted by the license examiner to the commissioner, together with the renewal fee. A copy signed by the examiner shall be given to the applicant, and a copy shall be retained by the examiner. The license examiner shall, not later than ten (10) days from the date of an application, transmit the application, together with the fee, to the commissioner. The application blanks and funds shall be subject to audit at any time. The commissioner shall maintain records of all application forms on hand and issued to the examiners, who shall be charged therewith. The receipt provided for in this section shall be the only valid and recognized form of receipt for fees paid by applicants, and the receipt shall be sufficient in lieu of the renewed license for a period of sixty (60) days or until the renewed license has been issued to the applicant by the commissioner.

(2) There shall be tendered with all applications for a temporary driving permit, temporary motorcycle driving permit, initial issuance of any license issued pursuant to this article, renewal licenses, duplicate licenses or any other services for which a fee is charged, the proper fee required by law by cash, certified check, money order or electronic payment as authorized under Section 27-104-33.

(3) The Commissioner of Public Safety shall deposit the amount of fees, together with all fees for duplicate licenses, permits, delinquent fees and reinstatement fees collected by him into the General Fund of the State Treasury, in accordance with the provisions of Section 45-1-23(2); however, Seven Dollars ($7.00) of the fee derived from the fee charged for original and renewal operators' licenses imposed under Section 63-1-43(1) and Four Dollars ($4.00) of the fee derived from the fee charged for original and renewal Class D commercial drivers' licenses under Section 63-1-43(4) shall be deposited into a special fund that is created in the State Treasury. Monies in the fund may be expended upon legislative appropriation solely for the purchase by the Mississippi Highway Safety Patrol of patrol cars, communications equipment and weapons.

HISTORY: Codes, 1942, §§ 8102, 8114; Laws, 1938, ch. 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, §§ 7, 8; Laws, 1948, ch. 343, §§ 5, 6; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, §§ 3, 5; Laws, 1958, chs. 493, 509; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1968, ch. 541, § 1; Laws, 1976, ch. 396, § 5; Laws, 1978, ch. 422, § 1; Laws, 1985, ch. 376, § 17; Laws, 1992, ch. 469, § 2; Laws, 2011, ch. 467, § 4; Laws, 2013, ch. 517, § 2, eff from and after July 1, 2013.

Cross References — Highway patrol operating fund generally, see § 45-1-23.
Motorcycle operator's license, see § 63-1-6.

Notice by Commissioner of Public Safety to person concerning suspension, cancellation or revocation of such person's driver's license or driving privileges, see § 63-1-52.

§ 63-1-46. Fees for reinstatement of license subsequent to suspension, revocation or cancellation generally; disposition of fees; procedure and fees for reinstatement of license suspended for noncompliance with support order.

(1)(a) Except as otherwise provided in this section, a fee of One Hundred Dollars ($100.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended, revoked or cancelled.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) Twenty-five Dollars ($25.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars ($25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars ($25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol; and

(iv) Twenty-five Dollars ($25.00) shall be deposited into the Interlock Device Fund created in Section 63-11-33.

(2)(a) A fee of One Hundred Seventy-five Dollars ($175.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended or revoked under the provisions of the Mississippi Implied Consent Law.

(b) The funds received under the provisions of this subsection shall be distributed as follows:

(i) One Hundred Dollars ($100.00) shall be deposited into the State General Fund in accordance with Section 45-1-23;

(ii) Twenty-five Dollars ($25.00) shall be paid to the Board of Trustees of the Public Employees' Retirement System for funding the Mississippi Highway Safety Patrol Retirement System as provided under Section 25-13-7;

(iii) Twenty-five Dollars ($25.00) shall be deposited into the special fund created in Section 63-1-45(3) for purchases of equipment by the Mississippi Highway Safety Patrol; and

(iv) Twenty-five Dollars ($25.00) shall be deposited into the Interlock Device Fund created in Section 63-11-33.

(3)(a) A fee of Twenty-five Dollars ($25.00) shall be charged for the reinstatement of a license issued under this article to every person whose license has been validly suspended for nonpayment of child support under the provisions of Sections 93-11-151 through 93-11-163. The funds received under the provisions of this subsection shall be deposited into the State General Fund in accordance with Section 45-1-23.

(b) The procedure for the reinstatement of a license issued under this article that has been suspended for being out of compliance with an order for support, as defined in Section 93-11-153, and the payment of any fees for the reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(4) A fee of Twenty-five Dollars ($25.00) will be charged for the reinstatement of a license that was suspended due to payment by a draft or other instrument that is dishonored by the payor.

(5) All reinstatement fees charged under this section shall be in addition to the fees prescribed in Section 63-1-43.

HISTORY: Laws, 1980, ch. 335; Laws, 1985, ch. 376, § 18; Laws, 1989, ch. 501, § 1; Laws, 1991, ch. 468 § 3; Laws, 1996, ch. 507, § 11; Laws, 2013, ch. 517, § 1; Laws, 2014, ch. 424, § 13; Laws, 2014, ch. 493, § 3, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 33, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of subsection (4). The words "This subsection (4) of Section (3) shall stand repealed" were changed to "This subsection (4) shall stand repealed". The Joint Committee ratified the correction at its May 20, 1998 meeting.

Section 3 of Chapter 493, Laws of 2014, effective from and after July 1, 2014 (approved April 16, 2014), amended this section. Section 13 of Chapter 424, Laws of 2014, effective from and after October 1, 2014 (approved March 24, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Editor's Notes — Laws of 1990, Chapter 588, § 26, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions were not implemented. The text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Chapter 489, Laws of 2013, referred to in (1)(b)(iv) and (2)(b)(iv), also amended Section 63-1-45 and enacted Section 63-1-16.

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Cross References — Operation of disability and relief fund for members of Mississippi Highway Safety Patrol, see § 25-13-7.

Provision that future funding for members who elect early retirement under the Highway Safety Patrol Retirement System shall be provided from surplus funds of such system as deposited therein pursuant to this section, see § 25-13-14.

Creation of highway patrol operating fund and budget therefor, see § 45-1-23.
Motorcycle operator's license, see § 63-1-6.
Fees for licenses generally, see § 63-1-43.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 116 et seq.

CJS.
60 C.J.S. Motor Vehicles §§ 353 et seq.

§ 63-1-47. Duration and expiration of licenses; release of applicant's school attendance records to department of public safety; suspension of license of certain students who drop out of school.

(1)(a) Except as otherwise provided in this section, each applicant for an original or renewal Class R or Class D license issued pursuant to this article, who is entitled to issuance of same, shall be issued a four-year license or an eight-year license, at the option of the applicant, which will expire at midnight on the licensee's birthday and may be renewed any time within six (6) months before the expiration of the license upon application and payment of the required fee, unless required to be reexamined.

(b) The term of an ignition-interlock-restricted license issued under this article shall be four (4) years.

(2) Any commercial driver's license issued under Article 5 of this chapter shall be issued for a five-year term to expire at midnight on the licensee's birthday.

(3)(a) All applications by an operator under eighteen (18) years of age must be accompanied by documentation that the applicant is in compliance with the education requirements of Section 63-1-9(1)(g), and the documentation used in establishing compliance must be dated no more than thirty (30) days before the date of application.

(b) All applications by an operator under eighteen (18) years of age, if applicable, must be accompanied by documentation signed and notarized by the parent or guardian of the applicant and the appropriate school official, authorizing the release of the applicant's attendance records to the Department of Public Safety as required under Section 63-1-10.

(c) The commissioner shall suspend the driver's license or learner's permit of a student under eighteen (18) years of age who has been reported by the Department of Education as required by Section 63-1-10.1, and shall give notice of the suspension to the licensee as provided in Section 63-1-52(4). A school superintendent or designee may request that the driver's license or learner's permit that has been suspended under the provisions of this subsection be reinstated after the student has successfully completed nine (9) weeks of school attendance without an unlawful absence.

(4)(a) Any original or renewal license issued under this chapter to a person who is not a United States citizen shall expire four (4) years from the date of issuance or on the expiration date of the applicant's authorized stay in the United States, whichever is the lesser period of time, and may be renewed, if the person is otherwise qualified to renew the license, within thirty (30) days of expiration. The fee for any such license and for renewal shall be as prescribed in Section 63-1-43.

(b) Any applicant for an original or renewal license under this subsection (4) must present valid documentary evidence documenting that the applicant:

(i) Is a citizen or national of the United States;

(ii) Is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) Has conditional permanent residence status in the United States;

(iv) Has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into or lawful presence in the United States;

(vi) Has a pending application for asylum in the United States;

(vii) Has a pending or approved application for temporary protected status in the United States;

(viii) Has approved deferred-action status;

(ix) Has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or

(x) Has a valid employment authorization card issued by the United States Department of Homeland Security.

(5) For any driver's license issued under this chapter, the Department of Public Safety shall send an email and text message notification of an upcoming driver's license expiration date to the known emails and phone numbers authorized by license holders for such notices not less than thirty (30) days before the expiration date of that license.

HISTORY: Codes, 1942, § 8114; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1946, ch. 420, § 8; Laws, 1948, ch. 343, § 6; Laws, 1956, ch. 378, § 5; Laws, 1958, ch. 509; Laws, 1968, ch. 541, § 1; Laws, 1981, ch. 453, § 3; Laws, 1985, ch. 376, § 19; Laws, 1989, ch. 482, § 24; Laws, 1990, ch. 310, § 1; Laws, 1994, ch. 588, § 7; Laws, 2000, ch. 624, § 5; Laws, 2002, ch. 584, § 4; Laws, 2009, ch. 488, § 4; Laws, 2009, ch. 560, § 31; Laws, 2010, ch. 423, § 2; Laws, 2011, ch. 468, § 1; Laws, 2013, ch. 489, § 5; Laws, 2014, ch. 424, § 14, eff from and after Oct. 1, 2014; Laws, 2020, ch. 477, § 7, eff from and after passage (approved July 8, 2020); Laws, 2021, ch. 414, § 9, eff from and after passage (approved April 5, 2021); Laws, 2021, ch. 464, § 16, eff from and after passage (approved April 16, 2021).

Joint Legislative Committee Note — Section 4 of ch. 448, Laws of 2009, effective July 1, 2009 (approved April 6, 2009), amended this section. Section 31 of ch. 560 Laws of 2009, effective from and after July 1, 2009 (approved April 17, 2009), also amended this section. As set out above, this section reflects the language of Section 31 of ch. 560, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 9 of Chapter 414, Laws of 2021, effective upon passage (approved April 5, 2021), amended this section. Section 16 of Chapter 464, Laws of 2021, effective upon passage (approved April 16, 2021) also amended this section. As set out above, this section reflects the language of Section 16 of Chapter 464, which contains language that specifically provides that it supersedes § 63-1-47 as amended by Chapter 414, Laws of 2021.

Amendment Notes — The first 2021 amendment (ch. 414), effective April 5, 2021, in (1), deleted former (b), which read: "The term of an intermediate license issued under this article shall be one (1) year," and redesignated former (c) as (b); and in (3)(c), deleted "intermediate license" following "the driver's license" in the first and second sentences.

The second 2021 amendment (ch. 464), effective April 16, 2021, in (1), deleted former (b), which read: "The term of an intermediate license issued under this article shall be one (1) year," and redesignated former (c) as (b); and in (3)(c), deleted "intermediate license" following "the driver's license" and "regular" preceding "learner's permit" in the first and second sentences.

Cross References — Motorcycle operator's license, see § 63-1-6.

Fees for operators' and commercial drivers' licenses, see § 63-1-43.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 100 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 340-343.

§ 63-1-49. Renewal of licenses.

(1) An expired license issued pursuant to this article may be renewed at any time within sixty (60) months after the expiration date of the license upon application and payment of the required fee, and the payment of a delinquent fee prescribed in Section 63-1-43, in lieu of a driver examination, unless the holder of the expired license is required to be examined, or unless the department has reason to believe the licensee is no longer qualified to receive a license.

(2)(a) Any person in the Armed Services of the United States, who holds a valid license issued pursuant to this chapter and is out of state due to military service at the time the license expires, may renew the license by mail or by online renewal services while out of state due to military service or at any time within ninety (90) days after being discharged from military service or upon returning to the state without payment of any delinquent fee or examination, unless the department has reason to believe that the licensee is no longer qualified to receive a license. The person shall make proof by affidavit of the fact of the person's current military service or of the time of discharge or return. The expiration of the license of a military person under the provisions of this paragraph (a) shall not affect the validity of the license, but the license shall continue to be valid and permit the person to operate a motor vehicle in this state for a period of ninety (90) days after discharge from military service or return to the state or until renewal of the license, whichever occurs first.

(b) The provisions of paragraph (a) of this subsection (2) also apply to a dependent of a person in the Armed Services of the United States who is out of state due to military service if the dependent resides out of state with the Armed Services member and the license of the dependent expires during the family member's absence from the state. The Commissioner of Public Safety may adopt such rules and regulations under the Administrative Procedures Act as may be necessary to implement the provisions of this paragraph.

(3) Any person holding a valid license issued pursuant to this article who is going overseas for two (2) to four (4) years and whose license will expire during the stay overseas may renew the license for four (4) years or eight (8) years before leaving. The person shall make proof by affidavit of the fact of the overseas travel.

HISTORY: Codes, 1942, §§ 8102, 8114; Laws, 1938, ch. 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, §§ 7, 8; Laws, 1948, ch. 343, §§ 5, 6; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, §§ 3, 5; Laws, 1958, chs. 493, 509; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1968, ch. 541, § 1; Laws, 1985, ch. 376, § 20; Laws, 1991, ch. 328 § 1; Laws, 1998, ch. 339, § 1; Laws, 2002, ch. 395, § 1; Laws, 2005, ch. 407, § 1; Laws, 2014, ch. 424, § 15, eff from and after Oct. 1, 2014; Laws, 2022, ch. 407, § 1, eff from and after passage (approved April 13, 2022).

Editor's Notes — Laws of 2022, ch. 407, § 4, provides:

"SECTION 4. Section 1 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2022."

Amendment Notes — The 2022 amendment, effective April 13, 2022, in (1), substituted "sixty (60) months" for "eighteen (18) months."

Cross References — Motorcycle operator's license, see § 63-1-6.

JUDICIAL DECISIONS

1. In general.

Parent who signed application of minor son was not liable for property damages inflicted by son's negligent operation of automobile under renewal license for succeeding year, where application for such renewal by minor while still under the age of seventeen years was not signed by parent. Houston v. Holmes, 202 Miss. 300, 32 So. 2d 138, 1947 Miss. LEXIS 276 (Miss. 1947).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 100 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 340-343.

§ 63-1-51. Grounds and procedure for revocation of licenses; suspension of license for noncompliance with order for support.

(1) It shall be the duty of the court clerk, upon conviction of any person

holding a license issued pursuant to this article where the penalty for a traffic violation is as much as Ten Dollars ($10.00), to mail a copy of abstract of the court record or provide an electronically or computer generated copy of abstract of the court record immediately to the commissioner at Jackson, Mississippi, showing the date of conviction, penalty, etc., so that a record of same may be made by the Department of Public Safety. The commissioner shall forthwith revoke the license of any person for a period of one (1) year upon receiving a duly certified record of each person's convictions of any of the following offenses when such conviction has become final:

(a) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) Any felony in the commission of which a motor vehicle is used;

(c) Failure to stop and render aid as required under the laws of this state in event of a motor vehicle accident resulting in the death or personal injury of another;

(d) Perjury or the willful making of a false affidavit or statement under oath to the department under this article or under any other law relating to the ownership or operation of motor vehicles; or

(e) Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months.

(2) The commissioner shall revoke the license issued pursuant to this article of any person convicted of negligent homicide, in addition to any penalty now provided by law.

(3) In addition to the reasons specified in this section, the commissioner shall be authorized to suspend the license issued to any person pursuant to this article for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

HISTORY: Codes, 1942, §§ 8106, 8173; Laws, 1938, chs. 143, 200; Laws, 1940, ch. 167; Laws, 1956, ch. 379, § 1; Laws, 1968, ch. 373, § 1; Laws, 1971, ch. 515, § 26; Laws, 1985, ch. 376, § 21; Laws, 1986, ch. 500, § 50; Laws, 1995, ch. 506, § 2; Laws, 1996, ch. 527, § 12; Laws, 2009, ch. 372, § 1, eff from and after passage (approved Mar. 17, 2009); Laws, 2019, ch. 466, § 29, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Cross References — Prohibition against suspending or revoking a person's driver's license for violations of laws and ordinances in regard to the parking of vehicles, see § 21-23-19.

Revocation of municipal license of bus operator, see § 21-27-155.

Notice by Commissioner of Public Safety to person concerning suspension, cancellation or revocation of such person's driver's license or driving privileges, see § 63-1-52.

Applicability of Article IV of Driver License Compact Law to offenses enumerated in subsection (1) of this section, see § 63-1-113.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

A motorist whose operator's license was revoked following his conviction for driving while intoxicated was not entitled to proceed by writ of certiorari in the circuit court to review the action of the commissioner of public safety when he had previously failed to exhaust the administrative remedies provided by Code 1942, § 8105. Mississippi State Dep't of Public Safety v. Berry, 217 So. 2d 11, 1968 Miss. LEXIS 1249 (Miss. 1968).

OPINIONS OF THE ATTORNEY GENERAL

In order to have a conviction as required under this section there must be a charge of contempt filed by way of citation or warrant of arrest and a subsequent finding of guilt of contempt. Markopoulos, Nov. 15, 2004, A.G. Op. 04-0561.

RESEARCH REFERENCES

ALR.

What constitutes "operation" or "negligence in operation" within statute making owner of motor vehicle liable for negligence in its operation. 13 A.L.R.2d 378.

Criminal responsibility of one other than driver under "hit-and-run" statute. 62 A.L.R.2d 1130.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated. 66 A.L.R.2d 1146.

What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license. 79 A.L.R.2d 866.

Suspension or revocation of driver's license for refusal to take sobriety test. 88 A.L.R.2d 1064.

Ordinance providing for suspension or revocation of state-issued driver's license as within municipal power. 92 A.L.R.2d 204.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo. 97 A.L.R.2d 1367.

Regulations establishing a "point system" as regards suspension or revocation of license of operator of motor vehicle. 5 A.L.R.3d 690.

Construction and application of statutes creating presumption or other inference of intoxication from specified percentages of alcohol present in system. 16 A.L.R.3d 748.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense. 16 A.L.R.3d 1373.

Automobiles: driving under the influence, or when addicted to the use, of drugs as criminal offense. 17 A.L.R.3d 815.

What amounts to negligence within meaning of statutes penalizing negligent homicide by operation of motor vehicle. 20 A.L.R.3d 473.

Homicide by automobile as murder. 21 A.L.R.3d 116.

Pardon as restoring public office or license or eligibility therefor. 58 A.L.R.3d 1191.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license. 60 A.L.R.3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license. 60 A.L.R.3d 427.

Validity and construction of statute or ordinance mandating imprisonment for habitual or repeated traffic offender. 2 A.L.R.4th 618.

Drunk driving: Motorist's right to private sobriety test. 45 A.L.R.4th 11.

Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations. 48 A.L.R.4th 367.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 116 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

3 Am. Jur. Pl & Pr Forms, Rev, Automobiles and Highway Traffic, Form 49.1.

CJS.

60 C.J.S., Motor Vehicles §§ 353 et seq.

§ 63-1-52. Notice by Commissioner of Public Safety to person concerning suspension, cancellation or revocation of person's driver's license or driving privileges.

(1) Whenever the Commissioner of Public Safety suspends, cancels or revokes the driver's license or driving privileges of any person, notice of the suspension, cancellation or revocation shall be given to such person by the commissioner, or his duly authorized agent, in the manner provided in subsection (2) of this section and at the time provided in subsection (3) of this section or in the manner and at the time provided in subsection (4) of this section.

(2) Notice shall be given in the following manner:

(a) In writing, (i) by United States Certificate of Mailing; or (ii) by personal service at the person's address as it appears on the driving record maintained by the Department of Public Safety or at the person's last-known address; or (iii) by personal notice being given by any law enforcement officer of this state or any duly authorized agent of the Commissioner of Public Safety on forms prescribed and furnished by the Commissioner of Public Safety; whenever a person's driver's license or driving privileges are suspended, revoked or cancelled in accordance with the Mississippi Driver License Compact Law, the Mississippi Implied Consent Law, the Mississippi Motor Vehicle Safety Responsibility Law or subsection (2)(c), (2)(d), (2)(e) or (2)(f) of Section 63-1-53.

(b) In writing, by United States first class mail, whenever a person's driver's license or driving privileges are suspended, revoked or cancelled in accordance with the Mississippi Commercial Driver's License Law, the Youth Court Law, Chapter 23 of Title 43, Mississippi Code of 1972, Section 63-1-45, Section 63-1-51, subsection (2)(g) or (2)(h) of Section 63-1-53, or Section 63-9-25.

(3) Notice shall be given at the following time:

(a) Before suspension, revocation or cancellation, whenever a person's driver's license or driving privileges are suspended, revoked or cancelled in accordance with the Mississippi Driver License Compact Law, the Mississippi Motor Vehicle Safety Responsibility Law or subsection (2)(c), (2)(d), (2)(e) or (2)(f) of Section 63-1-53.

(b) Unless otherwise specifically provided for by law, at the time of suspension, revocation or cancellation, whenever a person's driver's license or driving privileges are suspended, revoked or cancelled in accordance with the Mississippi Commercial Driver's License Law, the Mississippi Implied Consent Law, the Youth Court Law, Chapter 23 of Title 43, Mississippi Code of 1972, Section 63-1-45, Section 63-1-51, subsection (2)(g) or (2)(h) of Section 63-1-53, or Section 63-9-25.

(4) Whenever the Commissioner of Public Safety suspends, revokes or cancels the driver's license or driving privileges of any person in accordance with some provision of law other than a provision of law referred to in subsections (2) and (3) of this section, and the manner and time for giving notice is not provided for in such law, then notice of such suspension, revocation or cancellation shall be given in the manner and at the time provided for under subsections (2)(b) and (3)(b) of this section.

HISTORY: Laws, 1991, ch. 412, § 1, eff from and after July 1, 1991; Laws, 2019, ch. 466, § 31, eff from and after July 1, 2019.

Editor's Notes — Chapter 23 of Title 43 (pertaining to family courts), referred to in (2)(b) and (3)(b), was repealed by Laws of 1999, ch. 432, § 2, effective from and after May 28, 1999.

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Cross References — Suspension of driver's license by commissioner for failure to respond to summons or citation or to pay fine, fees and assessments, see § 63-1-51.

Notice of suspension of license without preliminary hearing, see § 63-1-53.

Notice of suspension of license for driving under influence of intoxicating liquor, see § 63-11-23.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 63-1-53. Notice to accused upon failure to pay fine; notice to Commissioner of Public Safety; authority of commissioner to suspend license without preliminary hearing; notice of suspension; hearing.

(1) Upon failure of any person to pay timely any fine, fee or assessment levied as a result of any violation of this title, the clerk of the court shall give written notice to such person by United States first-class mail at his last known address advising such person that, if within ninety (90) days after such notice is deposited in the mail, the person has not paid the entire amount of all fines, fees and assessments levied, then the court will pursue collection as for

any other delinquent payment, and shall be entitled to collection of all additional fees in accordance with subsection (4) of this section.

(2) The commissioner is hereby authorized to suspend the license of an operator without preliminary hearing upon a showing by his records or other sufficient evidence that the licensee:

(a) Has committed an offense for which mandatory revocation of license is required upon conviction except under the provisions of the Mississippi Implied Consent Law;

(b) Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(c) Is an habitually reckless or negligent driver of a motor vehicle;

(d) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(e) Is incompetent to drive a motor vehicle;

(f) Has permitted an unlawful or fraudulent use of such license;

(g) Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or

(h) Has committed a violation for which mandatory revocation of license is required upon conviction, entering a plea of nolo contendere to, or adjudication of delinquency, pursuant to the provisions of subsection (1) of Section 63-1-71.

(3) Notice that a person's license is suspended or will be suspended under subsection (2) of this section shall be given by the commissioner in the manner and at the time provided for under Section 63-1-52, and upon such person's request, he shall be afforded an opportunity for a hearing as early as practicable, but not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner, or his duly authorized agent, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the commissioner shall either rescind any order of suspension or, good cause appearing therefor, may extend any suspension of such license or revoke such license.

(4) If a licensee has not paid all cash appearance bonds authorized under Section 99-19-3 or all fines, fees or other assessments levied as a result of a violation of this title within ninety (90) days after receiving notice of the licensee's failure to pay all fines, fees or other assessments as provided in subsection (1) of this section, the court is authorized to pursue collection under Section 21-17-1(6) or 19-3-41(2) as for any other delinquent payment, and shall be entitled to collection of all additional fees authorized under those sections.

HISTORY: Codes, 1942, § 8107; Laws, 1938, ch. 143; Laws, 1956, ch. 379, § 2; Laws, 1971, ch. 515, § 27; Laws, 1986, ch. 500, § 51; Laws, 1991, ch. 403, § 1; Laws, 1991, ch. 468 § 7; Laws, 1991, ch. 615 § 1; Laws, 1993, ch 487, § 1; Laws,

2009, ch. 499, § 1; Laws, 2010, ch. 517, § 1, eff from and after July 1, 2010; Laws, 2019, ch. 466, § 30, eff from and after July 1, 2019.

Editor's Notes — Laws of 1990, Chapter 588, § 25, amended this section effective July 1, 1990 provided that the Legislature, by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions were not implemented. The text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Laws of 1993, ch. 487, § 3, effective July 1, 1993, provides as follows:

"SECTION 3. The amendments to the sections of law contained in this act shall apply only to convictions occurring from and after July 1, 1993."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Cross References — Municipal and justice courts authorized to purge judgment rolls of all fines and fees owed by deceased person upon proof of death, see § 9-1-47.

Prohibition against suspending or revoking a person's driver's license for violations of laws and ordinances in regard to the parking of vehicles, see § 21-23-19.

Suspension of municipal license of bus operator, see § 21-27-155.

Suspension of license for unlawfully parking in an area designated for handicapped parking, see § 27-19-56.

Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Replacement of unexpired driver's license surrendered or suspended for medical reasons by free identification card, see § 45-35-7.

Notice by Commissioner of Public Safety to person concerning suspension, cancellation or revocation of such person's driver's license or driving privileges. see § 63-1-52.

Forfeiture for 90 days of person under arrest who refuses to submit to chemical test mandated by Implied Consent Law, see § 63-11-21.

OPINIONS OF THE ATTORNEY GENERAL

As for revocation of licenses of persons for out-of-state convictions, Miss. Code Section 63-1-53(g) gives Commissioner of Public Safety authority to suspend license of any person who "has committed an offense in another state which if committed in this state would be grounds for suspension or revocation". O'Cain, Jan. 20, 1993, A.G. Op. #93-0022.

In justice court, clerk or deputy clerk has power, under Miss. Code Section 63-1-53, to send out "fail to appear" notices to defendants on traffic or game and fish violations. Ferguson, June 9, 1993, A.G. Op. #93-0331.

A 10 day letter (commonly referred to as a DR15) on a traffic citation should be sent upon the failure of the defendant to appear on the date properly noticed or upon the failure of a defendant to pay any fine assessed; thus, if a defendant fails to appear for an initial appearance after receiving proper notice, the 10 day letter should be sent; in addition a 10 day letter should be sent if a defendant is tried in absentia, found guilty and assessed a fine. Mark, August 6, 1999, A.G. Op. #99-0398.

No statute of limitation exists on the collection of unpaid fines, and there is no limit on the authority of the Commissioner of Public Safety to suspend the license of an individual who still owes a fine on a traffic offense conviction where such conviction occurred five or ten years prior. Via, Apr. 19, 2002, A.G. Op. #02-0185.

The purpose of Section 63-1-53 is to give a person 10 days to respond to a citation; therefore, it is necessary to wait until the 10-day period has expired before issuing a warrant. Reno, July 29, 2005, A.G. Op. 05-0264.

RESEARCH REFERENCES

ALR.

Regulations establishing a "point system" as regards suspension or revocation of license of operator of motor vehicle. 5 A.L.R.3d 690.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license. 60 A.L.R.3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license. 60 A.L.R.3d 427.

State's liability to one injured by improperly licensed driver. 41 A.L.R.4th 111.

Admissibility, in motor vehicle license suspension proceedings, of evidence obtained by unlawful search and seizure. 23 A.L.R.5th 108.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 116 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 34, 41-56.

CJS.

60 C.J.S., Motor Vehicles §§ 353 et seq.

§ 63-1-55. Suspension of license of minor by trial judge; requirement of completion of defensive driving course; costs and assessments; procedure upon appeal of suspension.

A trial judge, in his discretion, if the person so convicted or who has entered a plea of guilty for any traffic violation, except the offenses enumerated in paragraphs (a) through (e) of subsection (1) of Section 63-1-51 and violations of the Implied Consent Law and the Uniform Controlled Substances Law, is a minor and dependent upon and subject to the care, custody and control of his parents or guardian, may, in lieu of the penalties otherwise provided by law and the provision of said section, suspend such minor's driver's license by taking and keeping same in custody of the court for a period of time not to exceed ninety (90) days. The judge so ordering such suspension shall enter upon his docket "DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR ________ DAYS IN LIEU OF CONVICTION" and such action by the trial judge shall not constitute a conviction. The trial judge also may require the minor to successfully complete a defensive driving course approved by the judge as a condition of the suspension. Costs of court and penalty assessment for driver education and training program may be imposed in such actions within the discretion of the court. Should a minor appeal, in the time and manner as by law provided, the decision whereby his license is suspended, the trial judge shall then return said license to the minor and impose the fines and/or penalties that he would have otherwise imposed and same shall constitute a conviction.

HISTORY: Codes, 1942, § 8106; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1956, ch. 379, § 1; Laws, 1968, ch. 373, § 1; Laws, 1971, ch. 515, § 26; Laws, 1992, ch. 323, § 1; Laws, 1996, ch. 527, § 2, eff from and after July 2, 1996.

Cross References — Prohibition against suspending or revoking a person's driver's license for violations of laws and ordinances in regard to the parking of vehicles, see § 21-23-19.

Driver training penalty assessment fund generally, see § 37-25-17.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 63-1-55 provides that justice court judge may suspend minor's driver's license in lieu of conviction, and in addition "may require the minor to successfully complete defensive driving course approved by the judge as a condition of the suspension." Ferguson, June 9, 1993, A.G. Op. #93-0331.

Judge has the discretion over approval of the defensive driving school to be completed by a minor. Hood, Mar. 11, 2005, A.G. Op. 05-0032.

Miss. Code Ann. § 63-9-11(3)(d) clearly and unequivocally requires instruction of an approved traffic safety violator course by a human being when it specifies that the course "provide minimum qualifications for instructors." This requirement does not conflict with Miss. Code Ann. § 63-1-55 allowing computerized defensive driving instruction for minors. Dearing, March 2, 2007, A.G. Op. #07-00091, 2007 Miss. AG LEXIS 80.

RESEARCH REFERENCES

ALR.

What amounts to adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license. 79 A.L.R.2d 866.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for trial de novo. 97 A.L.R.2d 1367.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 116 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 353 et seq.

§ 63-1-57. Driving while license or driving privilege cancelled, suspended or revoked.

Any person whose license issued pursuant to this article or driving privilege as a nonresident has been canceled, suspended or revoked as provided in this title or in Section 93-11-157 or 93-11-163, as the case may be, and who drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended or revoked, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than two (2) days or more than six (6) months. There may be imposed in addition thereto a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00) for each offense.

HISTORY: Codes, 1942, § 8110; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 22; Laws, 1988, ch. 563, § 2; Laws, 1996, ch. 507, § 13, eff from and after July 1, 1996.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. Affidavit.

The gravamen of the crime under this section [Code 1942, § 8110] is the driving when the driver has no license to drive and the fact that the driver could not tell from the affidavit whether he was charged with so driving when his license had been suspended or when it had been revoked is immaterial. Middleton v. State, 214 Miss. 697, 59 So. 2d 320, 1952 Miss. LEXIS 508 (Miss. 1952).

2. —Defect cured by amendment.

Where the original affidavit did not charge the defendant for driving motor vehicle without license upon a public highway in Mississippi the defect was cured by an amendment to the affidavit alleging that defendant was driving in District 5 of Marion County upon Highway No. 24 of the State of Mississippi. Middleton v. State, 214 Miss. 697, 59 So. 2d 320, 1952 Miss. LEXIS 508 (Miss. 1952).

OPINIONS OF THE ATTORNEY GENERAL

Amending a charge of violation of § 63-11-40 to a violation of this section when the facts of the case do not merit such an amendment would constitute a violation of § 63-11-39. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

RESEARCH REFERENCES

ALR.

Automobiles: necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended. 61 A.L.R.3d 1041.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 260, 261.

CJS.

61A C.J.S., Motor Vehicles §§ 1632-1635.

§ 63-1-58. License suspensions and restrictions to run consecutively.

Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of the Implied Consent Law or any administrative suspension imposed under this chapter shall run consecutively and not concurrently.

HISTORY: Laws, 2016, ch. 503, § 2, eff from and after Oct. 1, 2016.

Cross References — Implied Consent Law, see § 63-11-1 et seq.

§ 63-1-59. Making false affidavit or statements.

Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this article to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable.

HISTORY: Codes, 1942, § 8109; Laws, 1938, ch. 143.

Cross References — Punishment of person committing perjury, see § 97-9-61.

§ 63-1-60. Alteration, fraudulent use, or fraudulent procurement of license.

(1) It shall be unlawful for any person:

(a) To display, cause or permit to be displayed, or have in his possession, any fictitious, fraudulently altered or fraudulently obtained driver's license;

(b) To display or represent any driver's license not issued to him as being his own driver's license;

(c) To photograph, photostat, duplicate or in any way reproduce, manufacture, sell or distribute or alter any driver's license, or facsimile thereof, in such a manner that it could be mistaken for a valid driver's license;

(d) To display or have in his possession any photograph, photostat, duplicate, reproduction or facsimile of a driver's license unless authorized by law; or

(e) To take a driver's license examination for another or to use any other name, other than his own, on the driver's license application in an attempt to take the driver's license examination for another.

(2) Any person convicted of a violation of paragraph (a), (b), (d) or (e) of subsection (1) of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

(3) Any person under twenty-one (21) years of age at the time of the offense who is convicted of a violation of paragraph (c) of subsection (1) of this section shall be punished as follows:

(a) A first offense shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

(b) A second or subsequent offense, the offenses being committed within a period of five (5) years, shall be a misdemeanor punishable by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(4) Any person twenty-one (21) years of age or older at the time of the offense who is convicted of a violation of paragraph (c) of subsection (1) of this section is guilty of a felony and shall be punished by a fine of not less than Five Thousand Dollars ($5,000.00), or imprisonment for not more than three (3) years, or by both such fine and imprisonment.

HISTORY: Laws, 1985, ch. 479; Laws, 1998, ch. 558, § 2; Laws, 2001, ch. 551, § 2, eff from and after July 1, 2001.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Office supply store that allegedly made color photocopies of doctored driver's license subsequently used by underage driver to buy alcohol (although not on night of accident that resulted in death of plaintiff's decedent) was not negligent per se based on alleged violation of § 63-1-60, which was designed to prevent persons from making and using fake or improper drivers' licenses, as statute did not purport to prevent minors from purchasing alcoholic beverages and did not specifically state that it applied to businesses that had photocopying capability. Main v. Office Depot, 914 F. Supp. 1413, 1996 U.S. Dist. LEXIS 1261 (S.D. Miss.), aff'd, 101 F.3d 700, 1996 U.S. App. LEXIS 34247 (5th Cir. Miss. 1996).

§ 63-1-61. Causing or permitting child or ward under sixteen years of age to drive without authorization.

No person shall cause or knowingly permit his child or ward under the age of sixteen (16) years to drive a motor vehicle upon any highway if such minor is not authorized under the provisions of this article or is in violation of any of the provisions of this article. Any penalty imposed under the provisions of this section shall be in addition to any penalty imposed against the minor for a violation of this article.

HISTORY: Codes, 1942, § 8111; Laws, 1938, ch. 143; Laws, 1994, ch. 588, § 4, eff from and after September 1, 1995.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence insufficient.

1. In general.

A parent is negligent who permits a child under the statutory age for a licensed driver to drive his automobile on the highway, rendering him liable for the act of such child in permitting another to drive, even though he has forbidden child to do so, and to drive upon the road where the accident occurred. United Gas Pipe Line Co. v. Jones, 236 Miss. 471, 111 So. 2d 240, 1959 Miss. LEXIS 341 (Miss. 1959).

2. Evidence insufficient.

Evidence was insufficient to support a judgment against the defendant for property damage caused in an accident between the plaintiffs and the defendant's 14 year old son since there was no evidence that the defendant knew that his son was taking the car. Chandler v. Coleman, 759 So. 2d 459, 2000 Miss. App. LEXIS 102 (Miss. Ct. App. 2000).

RESEARCH REFERENCES

ALR.

Construction, application, and effect of legislation making it an offense to permit, or imputing negligence to one who permits an unauthorized or unlicensed person to operate motor vehicle. 69 A.L.R.2d 978.

Liability of donor of motor vehicle for injuries resulting from owner's operation. 22 A.L.R.4th 738.

Negligent entrustment of motor vehicle to unlicensed driver. 55 A.L.R.4th 1100.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 262.

CJS.

61A C.J.S., Motor Vehicles § 1751.

§ 63-1-63. Permitting operation of vehicle by another person in violation of article.

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under the provisions of this article or in violation of any of the provisions of this article.

HISTORY: Codes, 1942, § 8112; Laws, 1938, ch. 143.

JUDICIAL DECISIONS

1. In general.

Trial court erred by denying a seller's motion for summary judgment in the parents' wrongful death action, as Mississippi law did not impose a duty on the seller, sufficient to support a negligence claim, to restrict motor vehicle sales to licensed drivers or to determine the competence of drivers as part of the sale; the son was not required to have an "E" endorsement on his license to purchase the motorcycle, but only to drive the motorcycle on a highway. Laurel Yamaha, Inc. v. Freeman, 956 So. 2d 897, 2007 Miss. LEXIS 316 (Miss. 2007).

In an action against the parents and a minor for personal injuries arising out of a motor vehicle accident, where there was no proof that the father or mother authorized or knowingly permitted the minor to drive on the occasion in question, the trial court properly peremptorily instructed the jury to return a verdict for the parents. Prewitt v. Walker, 231 Miss. 860, 97 So. 2d 514, 1957 Miss. LEXIS 575 (Miss. 1957).

RESEARCH REFERENCES

ALR.

Construction, application, and effect of legislation making it an offense to permit, or imputing negligence to one who permits, an unauthorized or unlicensed person to operate motor vehicle. 69 A.L.R.2d 978.

Negligent entrustment of motor vehicle to unlicensed driver. 55 A.L.R.4th 1100.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 262.

CJS.

61A C.J.S., Motor Vehicles § 1751.

§ 63-1-65. Loan of license or temporary permit to another or use of another's permit or license.

It shall be unlawful for any person to lend or borrow any temporary driving permit or license issued pursuant to this article, or to display or represent a license or temporary permit not issued to himself. Any person violating this section shall be fined not less than Five Dollars ($5.00) and costs and not more than Twenty-five Dollars ($25.00) and costs.

HISTORY: Codes, 1942, § 8116; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 23, eff from and after July 1, 1985.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

§ 63-1-67. Renting motor vehicle to another.

(1) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed under the provisions of this article, or, in the case of a nonresident, then duly licensed under the laws of the state or country of his residence except a nonresident whose home state or country does not require that an operator be licensed.

(2) No person shall rent a motor vehicle to another until he has inspected the license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officers or employee of the commissioner.

HISTORY: Codes, 1942, § 8113; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 24, eff from and after July 1, 1985.

JUDICIAL DECISIONS

1. Burden on rental car companies.

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866, 2009 Miss. LEXIS 220 (Miss. 2009).

Miss. Code Ann. § 63-1-67 only places a burden on rental car companies to accept facially valid, unexpired driver's licenses. Cousin v. Enter. Leasing Company-South Cent., Inc., 948 So. 2d 1287, 2007 Miss. LEXIS 39 (Miss. 2007).

Rental car companies comply with Miss. Code Ann. § 63-1-67(1) by fulfilling their responsibilities as mandated under § 63-1-67(2) and (3). Cousin v. Enter. Leasing Company-South Cent., Inc., 948 So. 2d 1287, 2007 Miss. LEXIS 39 (Miss. 2007).

Because defendant rental car rental company complied with Miss. Code Ann. § 63-1-67 by checking a renter's facially valid license according to the procedures set forth in § 63-1-67(2) and (3) (even though the renter's license had been suspended), the trial judge did not err in granting summary judgment in favor of the car rental company on plaintiffs' negligence per se action. Cousin v. Enter. Leasing Company-South Cent., Inc., 948 So. 2d 1287, 2007 Miss. LEXIS 39 (Miss. 2007).

RESEARCH REFERENCES

ALR.

Criminal offenses in connection with rental of motor vehicles. 38 A.L.R.3d 949.

Rental agency's liability for negligent entrustment of vehicle. 78 A.L.R.3d 1170.

State regulation of motor vehicle rental ("you-drive") business. 60 A.L.R.4th 784.

§ 63-1-69. Punishment for violations where no specific penalty provided.

Any person convicted of a violation of this article or any provisions of said article for which no other penalty is provided shall be punished by a fine of not less than five dollars ($5.00) and costs and not more than two hundred fifty dollars ($250.00) and costs, or by imprisonment in the county jail for a period of from one to six months, or by both the fine and imprisonment at the discretion of the court.

HISTORY: Codes, 1942, § 8117; Laws, 1938, ch. 143.

Cross References — Prohibition against suspending or revoking a person's driver's license for violations of laws and ordinances in regard to the parking of vehicles, see § 21-23-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

§ 63-1-71. Revocation or suspension of driving privilege of person convicted of violation of Uniform Controlled Substance Law or violation of similar law of another jurisdiction; reduction of suspension in hardship cases.

(1) Notwithstanding the provisions of Section 63-11-30(3) and in addition to any penalty authorized by the Uniform Controlled Substances Law or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, every person convicted of driving under the influence of a controlled substance, or entering a plea of nolo contendere thereto, or adjudicated delinquent therefor, in a court of this state, the United States, another state, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, shall forthwith forfeit his right to operate a motor vehicle over the highways of this state for a period of not less than six (6) months. In the case of any person who at the time of the imposition of sentence does not have a driver's license or is less than sixteen (16) years of age, the period of the suspension of driving privileges authorized herein shall commence on the day the sentence is imposed and shall run for a period of not less than six (6) months after the day the person obtains a driver's license or reaches the age of sixteen (16). If the driving privilege of any person is under revocation or suspension at the time of any conviction or adjudication of delinquency for driving under the influence of a controlled substance, the revocation or suspension period imposed herein shall commence as of the date of termination of the existing revocation or suspension.

(2) The court in this state before whom any person is convicted of or adjudicated delinquent for driving under the influence of a controlled substance shall collect forthwith the Mississippi driver's license of the person and forward such license to the Department of Public Safety along with a report indicating the first and last day of the suspension or revocation period imposed

pursuant to this section. If the court is for any reason unable to collect the license of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the Commissioner of Public Safety. That report shall include the complete name, address, date of birth, eye color and sex of the person and shall indicate the first and last day of the suspension or revocation period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or revocation imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in Section 63-11-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of Section 63-11-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license but shall notify forthwith the Commissioner of Public Safety who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's nonresident driving privilege in this state.

(3) The county court or circuit court having jurisdiction, on petition, may reduce the suspension of driving privileges under this section if the suspension would constitute a hardship on the offender. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Twenty Dollars ($20.00) for each year, or portion thereof, of license revocation or suspension remaining under the original sentence, which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

HISTORY: Laws, 1991, ch. 468 § 1; Laws, 1993, ch 487, § 2, eff from and after July 1, 1993; Laws, 2019, ch. 466, § 32, eff from and after October 15, 2019.

Editor's Notes — Laws, 1993, ch. 487, § 3, effective July 1, 1993, provides as follows:

"SECTION 3. The amendments to the sections of law contained in this act shall apply only to convictions occurring from and after July 1, 1993."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Cross References — Uniform Controlled Substances Law, see § 41-29-101 et seq. Fee for reinstatement of license suspended or revoked for violation of Uniform Controlled Substances Law, see § 63-1-46.

Authority of commissioner to suspend operator's license without preliminary hearing for violation of Uniform Controlled Substances Law, see § 63-1-53.

Applicability of subsection (3) of this section to defendant who holds commercial driver's license or was operating commercial motor vehicle when violation occurred and who is charged with violating state of local traffic law other than parking violation, see § 63-1-222.

OPINIONS OF THE ATTORNEY GENERAL

This section applies to everyone pleading nolo to, convicted, or adjudicated delinquent of a controlled substances violation. Hankins, Oct. 30, 1991, A.G. Op. #91-0798.

Section 63-1-71(2) and Section 41-29-139(c)(2)(A) are not in conflict; report of conviction for less than one ounce of marijuana must be sent to the Bureau of Narcotics pursuant to 41-29-139, and, if court is unable to collect the license of person convicted, court shall also cause report of conviction to be sent to Commissioner of Public Safety, Driver Improvement Division. Lowe, Sept. 16, 1992, A.G. Op. #92-0680.

A defendant's driver's license will be suspended for a conviction of possession of marijuana or for possession of marijuana in a motor vehicle or for possession of paraphernalia and a conviction for any of these should be reported to the Department of Public Safety. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

§ 63-1-73. Repealed.

Repealed by Laws of 2015, ch. 326, § 2, effective July 1, 2015.

§ 63-1-73. [Laws, 2009, ch. 488, § 5; Laws, 2011, ch. 481, § 2, eff from and after July 1, 2011.]

Editor's Notes — Former § 63-1-73 prohibited the use of a wireless communication device by persons authorized to drive under intermediate licenses or temporary learning or driving permits while the vehicle is in motion or by a person operating a passenger bus with a minor passenger on the bus, with some exceptions.

For present provisions relating to the prohibition against texting or reading or posting to social media network site while driving, see § 63-33-1.

ARTICLE 2.

MISSISSIPPI COMMERCIAL DRIVER'S LICENSE LAW.

Sec.
63-1-74 through 63-1-90. Repealed.

§§ 63-1-74 through 63-1-90. Repealed.

Repealed by Laws, 2009, ch. 560, § 27, effective July 1, 2009.

§ 63-1-74. [Laws, 1989, ch. 482, § 2, eff from and after January 1, 1990.]

§ 63-1-75. [Laws, 1989, ch. 482, § 3; Laws, 2003, ch. 485, § 8; Laws, 2005, ch. 541, § 3, eff from and after July 1, 2005.]

§ 63-1-76. [Laws, 1989, ch. 482, § 4, eff from and after January 1, 1990.]

§ 63-1-77. [Laws, 1989, ch. 482, § 5, eff from and after January 1, 1990.]

§ 63-1-78. [Laws, 1989, ch. 482, § 6; Laws, 1992, ch. 304 § 1; Laws, 2005, ch. 541, § 2, eff from and after July 1, 2005.]

§ 63-1-79. [Laws, 1989, ch. 482, § 7; Laws, 1992, ch. 467, § 1; Laws, 1995, ch. 407, § 1; Laws, 2004, ch. 322, § 1, eff from and after July 1, 2004.]

§ 63-1-80. [Laws, 1989, ch. 482, § 8, eff from and after January 1, 1990.]

§ 63-1-81. [Laws, 1989, ch. 482, § 9; Laws, 1997, ch. 588, § 20; Laws, 2002, ch. 388, § 2; Laws, 2005, ch. 541, § 9, eff from and after July 1, 2005.]

§ 63-1-82. [Laws, 1989, ch. 482, § 10; Laws, 1992, ch. 488, § 1; Laws, 2001, ch. 535, § 4; Laws, 2004, ch. 322, § 2; Laws, 2005, ch. 332, § 1; Laws, 2005, ch. 541, § 5, eff from and after July 1, 2005.]

§ 63-1-83. [Laws, 1989, ch. 482, § 11; Laws, 1996, ch. 507, § 14; Laws, 2005, ch. 541, § 4, eff from and after July 1, 2005.]

§ 63-1-84. [Laws, 1989, ch. 482, § 12, eff from and after January 1, 1990.]

§ 63-1-85. [Laws, 1989, ch. 482, § 13, eff from and after January 1, 1990.]

§ 63-1-86. [Laws, 1989, ch. 482, § 14, eff from and after January 1, 1990.]

§ 63-1-87. [Laws, 1989, ch. 482, § 15, eff from and after January 1, 1990.]

§ 63-1-88. [Laws, 1989, ch. 482, § 16, eff from and after January 1, 1990.]

§ 63-1-89. [Laws, 1989, ch. 482, § 17, eff from and after January 1, 1990.]

§ 63-1-90. [Laws, 1989, ch. 482, § 18, eff from and after January 1, 1990.]

Editor's Notes — Former § 63-1-74 provided the purpose and construction of the article. For present similar provisions, see § 63-1-202.

Former § 63-1-75 provided definitions for terms used in the article. For present similar provisions, see § 63-1-203.

Former § 63-1-76 provided that no person who drives a commercial motor vehicle could have more than one (1) driver's license. For present similar provisions, see § 63-1-204.

Former § 63-1-77 required persons driving commercial motor vehicles to have commercial driver's license.

Former § 63-1-78 related to the applicability of provisions of the article. For present similar provisions relating to exemption of farm-related service industry employees, see § 63-1-207.

Former § 63-1-79 provided commercial driver's license qualification standards. For present similar provisions, see § 63-1-208.

Former § 63-1-80 related to nonresident commercial driver's licenses. For present similar provisions, see § 63-1-209.

Former § 63-1-81 related to the application for commercial driver's licenses. For present similar provisions, see § 63-1-210.

Former § 63-1-82 related to commercial driver's license content, classification, endorsement, and restrictions. For present similar provisions, see § 63-1-211.

Former § 63-1-83 related to the suspension of commercial driver's licenses. For present similar provisions, see § 63-1-216.

Former § 63-1-84 related to implied consent to tests for presence of alcohol in the blood. For present similar provisions, see § 63-1-224.

Former § 63-1-85 provided classifications of offenses under article and relationship to other laws. For present similar provisions, see § 63-1-225.

Former § 63-1-86 related to notification of state licensing authority of suspension, revocation, cancellation, etc. For present similar provisions, see § 63-1-212.

Former § 63-1-87 provided for reciprocity. For present similar provisions, see § 63-1-215.

Former § 63-1-88 related to full faith and credit of out-of-state convictions. For present similar provisions, see § 63-1-215.

Former § 63-1-89 related to the promulgation of rules and regulations by the commissioner of public safety.

Former § 63-1-90 provided for the use of inspection stations for commercial driver's license testing sites. For present similar provisions, see § 63-1-226.

Article 2 also contained a former § 63-1-73 (Laws, 1989, ch. 482, § 1, effective from and after January 1, 1990), which was repealed by Laws of 2009, ch. 560, § 27, effective July 1, 2009. A new § 63-1-73, enacted by Laws of 2009, ch. 488, § 5, effective from and after July 1, 2009, now appears in Article 1.

ARTICLE 3.

DRIVER LICENSE COMPACT LAW.

Sec.

63-1-101. Short title.
63-1-103. Form of compact.
63-1-105. Governor as "executive head."
63-1-107. Commissioner of public safety as "licensing authority;" duties of commissioner.
63-1-109. Compensation of commissioner as compact administrator.
63-1-111. Reports by courts or other state agencies to commissioner.
63-1-113. Applicability of Article IV of compact to certain offenses.

§ 63-1-101. Short title.

This article may be cited as the Mississippi Driver License Compact Law.

HISTORY: Codes, 1942, § 8125-01; Laws, 1962, ch. 514, § 1, eff from and after July 1, 1962.

Comparable Laws from other States — Alabama: Code of Ala. §§ 32-6-30 et seq.
Alaska: Alaska Stat. § 28.37.010 et seq.
Arizona: A.R.S. §§ 28-1851 through 28-1855.
Arkansas: A.C.A. §§ 27-17-101 through 27-17-106.
California: Cal Veh Code § 15000 et seq.
Colorado: C.R.S. 24-60-1101 through 24-60-1107.
Connecticut: Conn. Gen. Stat. § 14-111i et seq.
Delaware: 21 Del. C. §§ 8101, 8111 through 8113
District of Columbia: D.C. Code §§ 50-1001, 50-1002.
Florida: Fla. Stat. §§ 322.43 through 322.48.
Hawaii: HRS §§ 286C-1, 286C-2.
Idaho: Idaho Code §§ 49-2001 through 49-2003.
Illinois: 625 ILCS 5/6-700 et seq.
Indiana: Burns Ind. Code Ann. § 9-28-1-1 et seq.
Iowa: Iowa Code §§ 321C.1, 321C.2.
Kansas: K.S.A. §§ 8-1212 through 8-1218.
Louisiana: La. R.S. 32:1420 through 32:1425.
Maine: 29-A M.R.S. §§ 1451 through 1475.
Maryland: Md. Transportation Code Ann. §§ 16-701 through 16-708.
Minnesota: Minn. Stat. §§ 171.50 through 171.56.
Missouri: §§ 302.600, 302.605 R.S.Mo.
Montana: Mont. Code Anno., §§ 61-5-401 through 61-5-406.
New Hampshire: 21 RSA 263:77 through 263:81.
New Jersey: N.J. Stat. §§ 39:5D-1 through 39:5D-14.
New Mexico: N.M. Stat. Ann. § 66-5-49 et seq.
New York: NY CLS Veh & Tr § 516.
North Carolina: N.C. Gen. Stat. §§ 20-4.21 through 20-4.30.
Ohio: ORC Ann. § 4510.61.
Oklahoma: 47 Okl. St. §§ 781 through 788.
Oregon: ORS § 802.540 et seq.
Pennsylvania: 75 Pa.C.S. §§ 1581 through 1586.
South Carolina: S.C. Code Ann. §§ 56-1-610 through 56-1-690.
Texas: Tex. Transp. Code §§ 523.001 through 523.011.
Utah: Utah Code Ann.

§§ 53-3-601 through 53-3-607.
Vermont: 23 V.S.A. §§ 3901 through 3910.
Virginia: Va. Code Ann. § 46.2-483 et seq.
Washington: Rev. Code Wash. (ARCW) §§ 46.21.010 through 46.21.040.
West Virginia: W. Va. Code §§ 17B-1A-1, 17B-1A-2.
Wyoming: Wyo. Stat. §§ 31-7-201, 31-7-202.

§ 63-1-103. Form of compact.

The Driver License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

DRIVER LICENSE COMPACT

ARTICLE I

Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II

Definitions

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III

Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or whether the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV

Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of conviction for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this Article, such party state shall construe the denomination and description appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this Article.

ARTICLE V

Application for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII

Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII

Entry Into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

HISTORY: Codes, 1942, § 8125-02; Laws, 1962, ch. 514, § 2, eff from and after July 1, 1962.

Cross References — Revocation and suspension of licenses generally, see §§ 63-1-51 to 63-1-55.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 141, 142.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS.
60 C.J.S., Motor Vehicles § 363.

§ 63-1-105. Governor as "executive head."

As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

HISTORY: Codes, 1942, § 8125-05; Laws, 1962, ch. 514, § 5, eff from and after July 1, 1962.

Cross References — Powers of governor generally, see § 7-1-5.

§ 63-1-107. Commissioner of public safety as "licensing authority;" duties of commissioner.

As used in the compact, the term "licensing authority" with reference to this state, shall mean the department of public safety. The commissioner of public safety shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

HISTORY: Codes, 1942, § 8125-03; Laws, 1962, ch. 514, § 3, eff from and after July 1, 1962.

Cross References — Department of public safety and commissioner thereof generally, see Chapter 1 of Title 45.

§ 63-1-109. Compensation of commissioner as compact administrator.

The commissioner of public safety as compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator. However, he shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

HISTORY: Codes, 1942, § 8125-04; Laws, 1962, ch. 514, § 4, eff from and after July 1, 1962.

§ 63-1-111. Reports by courts or other state agencies to commissioner.

Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the commissioner of public safety in the manner and within the time provided by subsection (1) of Section 63-1-51 and Section 63-1-55.

HISTORY: Codes, 1942, § 8125-06; Laws, 1962, ch. 514, § 6, eff from and after July 1, 1962.

Cross References — Revocation and suspension of licenses generally, see §§ 63-1-51 to 63-1-55.

RESEARCH REFERENCES

ALR.

What amounts to conviction or adjudication of guilt for purpose of refusal, revocation, or suspension of automobile driver's license. 79 A.L.R.2d 866.

Admissibility of traffic conviction in later state civil trial. 73 A.L.R.4th 691.

§ 63-1-113. Applicability of Article IV of compact to certain offenses.

Article IV of the compact, set forth in Section 63-1-103, shall apply to those offenses enumerated in subsection (1) of Section 63-1-51, and any suspension therefor shall be governed by the provisions of Section 63-1-53.

HISTORY: Codes, 1942, § 8125-07; Laws, 1962, ch. 514, § 7, eff from and and after July 1, 1962.

Cross References — Revocation and suspension of licenses generally, see §§ 63-1-51 to 63-1-55.

ARTICLE 5.

COMMERCIAL DRIVER'S LICENSE ACT.

Sec.

63-1-201. Short title.
63-1-202. Statement of intent and purpose.
63-1-203. Definitions.
63-1-204. Limitation on number of driver's licenses.
63-1-205. Notification required by driver.
63-1-206. Employer responsibilities.
63-1-207. Commercial driver's license required.
63-1-208. Commercial driver's license qualification standards.
63-1-209. Nonresident commercial driver's license.
63-1-210. Application for commercial driver's license.
63-1-211. Commercial driver's license.
63-1-212. Records; notification.
63-1-213. Notification of traffic convictions.
63-1-214. Agreements.
63-1-215. Reciprocity.
63-1-216. Disqualification and suspension.
63-1-217. Suspensions and disqualifications to run concurrently.
63-1-218. Effective date of disqualification; hearing.
63-1-219. Disqualification from operation of vehicle.
63-1-220. Penalties.
63-1-221. Applicants for school bus endorsements.
63-1-222. Deferring imposition of sentence.
63-1-223. Penalty for authorizing railroad crossing violations.
63-1-224. Implied consent to chemical tests; administration of tests; effect of refusal to submit to test.

Sec.
63-1-225. Classification of offenses under this article; relationship to other laws.
63-1-226. Use of certain facilities and property for commercial driver's license testing sites.

§ 63-1-201. Short title.

This article may be cited as the Commercial Driver's License Act.

HISTORY: Laws, 2009, ch. 560, § 1, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-202. Statement of intent and purpose.

The purpose of this article is to implement the federal Commercial Motor Vehicle Safety Act of 1986 (49 USCS Section 31301 et seq.), hereinafter referred to as "CMVSA," and thereby prevent the loss to the State of Mississippi of substantial federal highway funds as a penalty for failure to comply therewith.

This article is a remedial law which should be liberally construed to promote public health, safety and welfare. The provisions of Article 1 of this chapter, being the Highway Safety Patrol and Driver's License Law of 1938, and the provisions of Title 63, Chapter 11, Mississippi Code of 1972, being the Mississippi Implied Consent Law, including penalties for violations thereof, shall be applicable to the provisions of this article to the extent that such laws do not conflict with the provisions of this article. If any provisions of this article conflict with the provisions of the Highway Safety Patrol and Driver's License Law of 1938 or the Mississippi Implied Consent Law, then the provisions of this article shall control.

HISTORY: Laws, 2009, ch. 560, § 2, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference in the first paragraph by substituting "Commercial Motor Vehicle Safety Act of 1986 (49 USCS Section 31301 et seq.)," for "Commercial Motor Vehicle Safety Act of 1986 (49 USCS Appx. Section 2701 et seq.)." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-203. Definitions.

As used in this article:

(a) "Alcohol" means any substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol and isopropanol.

(b) "Alcohol concentration" means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means:

(i) The number of grams of alcohol per one hundred (100) milliliters of blood; or

(ii) The number of grams of alcohol per two hundred ten (210) liters of breath.

(c) "Commercial driver's license" or "CDL" means a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR, Part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicle.

(d) "Commercial driver's license information system" or "CDLIS" means the CDLIS established by the Federal Motor Carrier Safety Administration (FMCSA) pursuant to Section 12007, of the Commercial Motor Vehicle Safety Act of 1986.

(e) "Commercial learner's permit" means a permit issued pursuant to Section 63-1-208(5).

(f) "Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(i) Has a gross combination weight rating of eleven thousand seven hundred ninety-four (11,794) kilograms or more (twenty-six thousand one (26,001) pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than four thousand five hundred thirty-six (4,536) kilograms (ten thousand (10,000) pounds);

(ii) Has a gross vehicle weight rating of eleven thousand seven hundred ninety-four (11,794) or more kilograms (twenty-six thousand one (26,001) pounds or more);

(iii) Is designed to transport sixteen (16) or more passengers, including the driver;

(iv) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(v) The term shall not include:

1. Authorized emergency vehicles as defined in Section 63-3-103;

2. Motor homes as defined in Section 63-3-103; however, this exemption shall only apply to vehicles used strictly for recreational, noncommercial purposes;

3. Military and commercial equipment owned or operated by the United States Department of Defense, including the National Guard and Mississippi Military Department, and operated by: active duty military personnel; members of the military reserves; members of the National Guard on active duty, including personnel on full-time National Guard duty; personnel on part-time National Guard training; National Guard military technicians (civilians who are required to wear military uniforms); employees of the Mississippi Military Department; and active duty United States Coast Guard personnel. This exception is not applicable to United States Reserve technicians;

4. Farm vehicles, which are vehicles:

a. Controlled and operated by a farmer;

b. Used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm;

c. Not used in the operations of a common or contract motor carrier; and

d. Used within one hundred fifty (150) miles of the farm.

(g) "Controlled substance" means any substance so classified under Section 102(6) of the Controlled Substances Act, 21 USCS 802(6), and includes all substances listed on Schedules I through V of 21 Code of Federal Regulations, Part 1308, as they may be revised from time to time, any substance so classified under Sections 41-29-113 through 41-29-121, Mississippi Code of 1972, and any other substance which would impair a person's ability to operate a motor vehicle.

(h) "Conviction" means an unvacated adjudication of guilt, or a determination by a judge or hearing officer that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated. Conviction shall also mean a plea of guilty or nolo contendere which has been accepted by the court.

(i) "Disqualification" means any of the following three (3) actions:

(i) The suspension, revocation or cancellation of a commercial driver's license by the state or jurisdiction of issuance;

(ii) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control, other than parking, vehicle weight or vehicle defect violations; or

(iii) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 CFR, Part 391.

(j) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle on a public highway or who is required to hold a commercial driver's license.

(k) "Employer" means any person, including the United States, a state, the District of Columbia or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle.

(*l*) "Foreign" means outside the fifty (50) United States and the District of Columbia.

(m) "Gross combination weight rating" or "GCWR" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating will be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and any load thereon.

(n) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single vehicle.

(o) "Hazardous materials" means any material that has been designated as hazardous under 49 USCS Section 5103 and is required to be placarded under subpart F of 49 CFR, Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR, Part 73.

(p) "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(q) "Nonresident commercial driver's license" or "nonresident CDL" means a commercial driver's license issued by a state to an individual under either of the following two (2) conditions:

(i) To an individual domiciled in a foreign country meeting the requirements of 49 CFR, Part 383.23(b)(1); or

(ii) To an individual domiciled in another state meeting the requirements of 49 CFR, Part 383.23(b)(2).

(r) "Serious traffic violation" means conviction at any time when operating a commercial motor vehicle or at those times when operating a noncommercial motor vehicle when the conviction results in the revocation, cancellation, or suspension of the operator's license or operating privilege, of:

(i) Excessive speeding, involving a single charge of any speed fifteen (15) miles per hour or more, above the posted speed limit;

(ii) Reckless driving, as defined under state or local law;

(iii) Improper traffic lane changes, as defined in Section 63-3-601, 63-3-603, 63-3-613 or 63-3-803;

(iv) Following the vehicle ahead too closely, as defined in Section 63-3-619;

(v) A violation of any state law or local ordinance relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(vi) Operating a commercial motor vehicle without obtaining a commercial driver's license;

(vii) Operating a commercial motor vehicle without a commercial driver's license in the driver's possession;

(viii) Operating a commercial motor vehicle without the proper class of commercial driver's license or endorsements, or both.

(s) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction, that a driver, or a commercial motor vehicle, or a motor carrier operation, is out of service pursuant to 49 CFR, Part 386.72, 392.5, 395.13, 396.9 or compatible laws, or the North American Uniform Out-of-Service Criteria.

(t) "State of domicile" means that state where a person has a true, fixed and permanent home and principal residence and to which the person has the intention of returning whenever the person is absent.

(u) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 CFR, Part 171. However, they do not include portable tanks having a rated capacity under one thousand (1,000) gallons.

(v) "United States" means the fifty (50) states and the District of Columbia.

HISTORY: Laws, 2009, ch. 560, § 3, eff from and after July 1, 2009; Laws, 2019, ch. 311, § 1, eff from and after July 1, 2019.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

Federal Aspects— Section 12007 of the Commercial Motor Vehicle Safety Act of 1986 [Pub. L. 99-570], see 49 USCS § 31309.

§ 63-1-204. Limitation on number of driver's licenses.

No person who drives a commercial motor vehicle shall have more than one (1) driver's license.

HISTORY: Laws, 2009, ch. 560, § 4, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-205. Notification required by driver.

The driver of a commercial motor vehicle shall notify the state and employers of convictions as follows:

(a) **The state.** Any driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the commissioner in the manner specified by the commissioner within thirty (30) days of the date of conviction.

(b) **Employers.** Any driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the driver's employer in writing of the conviction within thirty (30) days of the date of conviction.

(c) **Notification of suspensions, revocations and cancellations.** A driver whose driver's license is suspended, revoked, or cancelled by any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify the driver's employer of that fact before the end of the business day following the day the driver received notice of that fact.

(d) **Notification of previous employment.** Any person who applies to be a commercial motor vehicle driver must provide the employer, at the time of the application, with the following information for the ten (10) years preceding the date of application:

(i) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(ii) The dates between which the applicant drove for each employer; and

(iii) The reason for leaving that employer.

The applicant must certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

HISTORY: Laws, 2009, ch. 560, § 5, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-206. Employer responsibilities.

(1) Each employer shall require the applicant to provide the information specified in Section 63-3-205(c).

(2) No employer may knowingly allow, require, permit or authorize a driver to operate a commercial motor vehicle in the United States:

(a) During any period in which the driver has a CMV driver's license suspended, revoked, or cancelled by a state or has lost the privilege to operate a commercial motor vehicle in a state, or has been disqualified from operating a commercial motor vehicle;

(b) During any period in which the driver has more than one (1) CMV driver's license;

(c) During any period in which the driver, or the CMV the driver is driving, or the motor carrier operation, is subject to an out-of-service order; or

(d) In violation of a federal, state or local law or regulation pertaining to railroad-highway grade crossings.

HISTORY: Laws, 2009, ch. 560, § 6, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

There is a reference to "Section 63-3-205(c)" in subsection (1) of this section although there is no subsection (c) in Section 63-3-205. The section is set out above as it was enacted by Section 6 of Chapter 560, Laws of 2009.

§ 63-1-207. Commercial driver's license required.

(1) Except when driving under a commercial learner's permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle on the highways of this state unless the person:

(a) Holds a commercial driver's license;

(b) Is in immediate possession of the license; and

(c) The license has the applicable endorsements valid for the vehicle the person is driving.

(2) No person may be found to have committed a violation of subsection (1) of this section if the person provides proof to the court having jurisdiction of the traffic complaint that the individual held a commercial driver's license valid for the vehicle the person was driving on the date the complaint was issued.

(3) No person may drive a commercial motor vehicle while the person's driving privilege is suspended, revoked, or cancelled, while subject to a disqualification.

(4) No person may drive a commercial motor vehicle in violation of an out-of-service order.

(5)(a) Notwithstanding the provisions of this section, employees of farm-related service industries shall be exempt from the knowledge and skills tests required under this article, and shall be issued restricted commercial driver's licenses as long as the applicants meet the requirements of 49 CFR, Part 383, as amended from time to time, and upon payment of the appropriate fee.

(b) "Farm-related service industries" shall include farm retail outlets and suppliers, agri-chemical businesses, custom harvesters, and livestock feeders.

HISTORY: Laws, 2009, ch. 560, § 7, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-208. Commercial driver's license qualification standards.

(1) Except as otherwise provided, the commissioner shall not issue a commercial driver's license and commercial learner's permit to any person under the age of twenty-one (21) years.

(2) No person may be issued a commercial driver's license unless that person is domiciled in this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal

standards established by federal regulation enumerated in 49 CFR, Part 383, subparts F, G and H and has satisfied all other requirements of Title XII of Public Law 99-570 in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the commissioner. If the applicant wishes to have a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 CFR, Part 1572.

(3)(a) Any person who has been certified to provide commercial driver's license testing by the International Driver Examiner Certification (IDEC) program administered by the American Association of Motor Vehicle Administrators (AAMVA) shall, for purposes of this section, be defined as a certified third party examiner (CTPE). In addition, the commissioner shall authorize any person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency or instrumentality of local government, to administer the knowledge and skills test specified by this section, provided:

(i) The test is the same as would otherwise be administered by the state; and

(ii) Either:

1. The third party has entered into an agreement with this state which complies with requirements of 49 CFR, Part 383.75; or

2. The third party is a CTPE as defined in this subsection. The CTPE shall not be a direct employee of a trucking company.

(b) A CTPE performing testing under this section shall not be liable for any claim sounding in tort arising out of such testing.

(4)(a) The following tests may be waived as provided in this subsection (4):

(i) Knowledge test;

(ii) Driving skills test;

(iii) Passenger endorsement test;

(iv) Tank vehicle endorsement test; and

(v) Hazardous materials test.

(b) The commissioner, by rules adopted pursuant to the Mississippi Administrative Procedures Law, shall provide for a waiver of the tests specified in this section and entry level driver training for a commercial driver's license applicant who meets the requirements of 49 CFR, Part 383.77;

(c) The rules may establish deadlines by which applicants must claim entitlement and qualification to test waivers and may provide for the scheduling of group knowledge testing;

(d) The commissioner shall adopt rules and regulations to carry out the provisions of this subsection (4) as soon as practicable after July 1, 2022, but in any case no later than July 1, 2023.

(5) A commercial learner's permit shall be issued as follows:

(a) A commercial learner's permit may be issued to an individual who holds a valid Mississippi driver's license who has passed the vision and written tests required for the class of license authorizing the operation of the type of vehicle for which the permit application is being made;

(b) The commercial learner's permit shall be issued for a period of one (1) year for the fee prescribed in Section 63-1-43. Only one (1) renewal or reissuance may be granted within a two-year period. The holder of a commercial learner's permit may, unless otherwise disqualified, drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

(6) A commercial driver's license or commercial learner's permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or cancelled in any state. A driver's license may not be issued to a person who has a commercial driver's license issued by any state unless the person first surrenders all driver's licenses issued by any state, which licenses shall be returned to the issuing states for cancellation.

(7) A person shall be entitled to take the test for a commercial driver's license unless the person's driver's license is, at the time of the requested test, suspended, revoked, cancelled or disqualified in any other state.

(8) Notwithstanding any requirement imposed by state law or state or federal regulations restricting the issuance of a commercial driver's license to a person suffering from diabetes, a person suffering from diabetes may be issued a commercial driver's license if the person otherwise meets all qualifications for issuance provided:

(a) The driver is physically examined every year, including an examination by a treating clinician attesting to the fact that the driver is:

(i) Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one (1) documented, symptomatic hypoglycemic reaction per month);

(ii) Able to and has demonstrated willingness to properly monitor and manage the person's diabetes; and

(iii) Not likely to suffer any diminution in driving ability due to the person's diabetic condition.

(b) The driver agrees to and complies with the following conditions:

(i) A source of rapidly absorbable glucose shall be carried at all times while driving;

(ii) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;

(iii) Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by the Department of Public Safety;

(iv) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(v) Provide a copy of the annual medical certification to the person's employer for retention in the driver's qualification file and retain a copy of the certification on his person while driving for presentation to a duly authorized federal, state or local enforcement official.

(c) The commercial license issued under this subsection (8) will bear an endorsement restricting commercial driving on the license to driving only within the boundaries of Mississippi.

(d) For purposes of this section, "treating clinician" means a healthcare professional who manages and prescribes insulin for the treatment of the individual's diabetes mellitus.

(9) The fees for all licenses, permits, renewals and endorsements shall be as prescribed in Section 63-1-43.

HISTORY: Laws, 2009, ch. 560, § 8; Laws, 2014, ch. 424, § 16; Laws, 2017, ch. 353, § 1, eff from and after July 1, 2017; Laws, 2020, ch. 477, § 8, eff from and after passage (approved July 8, 2020); Laws, 2022, ch. 324, § 1, eff from and after July 1, 2022.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

Amendment Notes — The 2022 amendment, in (4), deleted the former introductory paragraph, which read: "A skills test may be waived as follows," added (a), redesignated former (a) through (c) as (b) through (d), in (b), substituted "waiver of the tests" for "waiver of the skills test" and inserted "and entry level driver training," in (c), deleted "skills" preceding "test waivers," and in (d), substituted "July 1, 2022" for "July 1, 2017" and "July 1, 2023" for "July 1, 2018"; in (5)(b), substituted "one (1) year" for "six (6) months"; in (8), substituted "a treating clinician" for "a board certified/eligible endocrinologist" in (a), and added (d).

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

Federal Aspects— Title XII of Public Law 99-570 [the Commercial Motor Vehicle Safety Act of 1986], see generally 49 USCS §§ 31301 et seq.

§ 63-1-209. Nonresident commercial driver's license.

The commissioner may issue a nonresident commercial driver's license to a person domiciled in a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 CFR, Part 383. In addition, the commissioner may issue a nonresident commercial driver's license to a person domiciled in a state while that state is prohibited from issuing commercial driver's licenses in accordance with 49 CFR, Part 384.405. The word "nonresident" must appear on the face of the nonresident commercial driver's license. An applicant shall surrender any nonresident commercial driver's license issued by another state. Prior to issuing a nonresident commercial driver's license, the commissioner shall establish the practical capability of revoking or suspending the nonresident commercial driver's license.

HISTORY: Laws, 2009, ch. 560, § 9, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-210. Application for commercial driver's license.

(1) The application for a commercial driver's license or commercial learner's permit shall include the following:

(a) The full name and current mailing and residential addresses of the person.

(b) A physical description of the person, including sex, height and weight.

(c) Date of birth.

(d) The applicant's social security number.

(e) The person's signature.

(f) Certifications that:

(i) For an applicant who operates or expects to operate in interstate or foreign commerce or who is otherwise subject to 49 CFR, Part 391, the applicant meets the qualification requirements contained in Part 391; or for an applicant who operates or expects to operate entirely in intrastate commerce and who is not subject to Part 391, that the applicant is subject to state driver qualification requirements and is not subject to Part 391;

(ii) The motor vehicle in which the applicant's skills test will be taken is representative of the type of motor vehicle that the applicant operates or expects to operate;

(iii) The applicant is not subject to any disqualification under 49 CFR, Part 385.51, or any license suspension, revocation, or cancellation under state law; and

(iv) The applicant does not have a driver's license from more than one (1) state or jurisdiction.

(g) Any other information required by the commissioner, including, but not limited to, the names of all states or jurisdictions where the applicant has been licensed to operate any type of motor vehicle during the previous ten (10) years.

(h) The application shall be accompanied by a fee as prescribed in Section 63-1-43.

(2) When a licensee or permittee changes his or her name, mailing address, or residence or in the case of the loss, mutilation, or destruction of a license or permit, the licensee or permittee shall notify the commissioner within sixty (60) days and apply in person for a duplicate license or permit in the same manner as set forth in subsection (1) of this section. The fee for a duplicate license or permit shall be as prescribed in Section 63-1-43.

(3) A person who has been a resident of this state for more than thirty (30) days shall not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

(4) Any person who knowingly falsifies information or certifications required under subsection (1) of this section shall have the person's commercial

driver's license revoked. Such persons may reapply for a commercial driver's license no sooner than sixty (60) days after the revocation.

(5)(a) Any male who is at least eighteen (18) years of age but less than twenty-six (26) years of age and who applies for or renews a commercial driver's license or renewal of a commercial learner's permit under this article shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 USCS Section 3802, as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicant to the Selective Service System. The applicant's submission of the application shall serve as an indication that the applicant either has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration. The commissioner shall notify the applicant on, or as a part of, the application that his submission of the application will serve as his consent to registration with the Selective Service System, if so required. The commissioner also shall notify any male applicant under the age of eighteen (18) that he will be registered upon turning age eighteen (18) as required by federal law.

HISTORY: Laws, 2009, ch. 560, § 10; Laws, 2014, ch. 424, § 17, eff from and after Oct. 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference in subsection (5)(a) by substituting "Section 3 of the Military Selective Service Act, 50 USCS Section 3802" for "Section 3 of the Military Selective Service Act, 50 USCS Appx 451 et seq." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-211. Commercial driver's license.

(1) **Contents of license.** A commercial driver's license shall be marked "commercial driver's license" or "CDL," and shall be, to the maximum extent practicable, tamper proof, and shall include, but not be limited to, the following information:

(a) The name and residential address of the person.

(b) The person's color photograph or imaged likeness.

(c) A physical description of the person including sex, height, and weight.

(d) Date of birth.

(e) Any number or identifier deemed appropriate by the commissioner.

(f) The person's signature.

(g) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions.

(h) The name of this state.

(i) The dates between which the license is valid.

(2) **Classifications, endorsements and restrictions.** Driver's licenses may be issued with the following classifications, endorsements, and restrictions:

(a) **Classifications.** Licensees may drive all vehicles in the class for which the license is issued and all lesser classes of vehicles, except those requiring special endorsements.

(i) Class A — Any combination of vehicles with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand (10,000) pounds.

(ii) Class B — Any single vehicle with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, and any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds.

(iii) Class C — Any single vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds:

1. Vehicles designed to transport sixteen (16) or more passengers, including the driver; and

2. Vehicles used in the transportation of hazardous materials as defined in Section 63-1-203.

(iv) Class D — Class D licenses are not commercial driver's licenses and shall be governed by the provisions of Section 63-1-5.

(b) Licenses may be issued with appropriate endorsements and restrictions noted thereon. The commissioner shall determine the manner of notation. Endorsements and restrictions may include, but are not limited to, those which:

(i) Authorize a driver to drive a vehicle transporting hazardous materials;

(ii) Restrict the driver to vehicles not equipped with air brakes when the person either fails the air brake component of the knowledge test or performs the skills test in a vehicle not equipped with air brakes;

(iii) Authorize driving motorcycles that are not autocycles as defined in Section 63-3-103;

(iv) Authorize driving tank vehicles;

(v) Authorize driving vehicles carrying passengers;

(vi) Authorize driving school buses;

(vii) Authorize driving double trailers;

(viii) Restrict the driver to operation solely within this state. A commercial driver's license or commercial learner's permit with this restriction may be issued to any person who has attained the age of eighteen (18) years.

(3) Before issuing a commercial driver's license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past ten (10) years, conduct a check of the applicant's operating record by querying the national driver register, established under 49 USCS Section

30302, and the Commercial Driver's License Information System, established under 49 USCS Section 31309, to determine if:

(a) The applicant has already been issued a commercial driver's license; and the applicant's commercial driver's license has been suspended, revoked, or canceled;

(b) The applicant had been convicted of any offenses contained in Section 205(a)(3) of the National Driver Register Act of 1982 (49 USCS Section 30304(a)(3)).

(4) Within ten (10) days after issuing a commercial driver's license, the commissioner shall notify the Commercial Driver License Information System of that fact, providing all information required to ensure identification of the person.

(5) The commercial driver's license shall expire in the manner set forth in Section 63-1-47.

(6) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by Section 63-1-210, providing updated information and required certifications. The department shall provide online renewals of a commercial driver's license as long as the renewal meets standards set forth in 49 CFR, Parts 383 and 384. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 CFR, Part 1572. If notice is received from the United States Transportation Security Administration that the applicant poses a security risk, the commissioner shall refuse to issue, or revoke within fifteen (15) days of receipt of the notice, a hazardous materials endorsement.

(7) The department shall provide a means for electronic transmission of a medical card and may charge a vendor convenience fee in an amount not to exceed Two Dollars and Fifty Cents ($2.50) per transmission. The department shall upload medical card information to the Commercial Driver License Information System within five (5) days of receiving the updated medical card information. In addition, within twenty-four (24) hours of such upload, the department shall notify the license holder by regular mail or electronically and request that receipt be acknowledged by the license holder. If receipt is not acknowledged by the license holder, the department shall exhaust any available means to contact the license holder.

HISTORY: Laws, 2009, ch. 560, § 11; Laws, 2014, ch. 424, § 18; Laws, 2014, ch. 508, § 1; Laws, 2015, ch. 406, § 5, eff from and after July 1, 2015; Laws, 2020, ch. 477, § 9, eff from and after passage (approved July 8, 2020).

Joint Legislative Committee Note — Section 18 of Chapter 424, Laws of 2014, effective from and after October 1, 2014 (approved March 24, 2014), amended this section. Section 1 of Chapter 508, Laws of 2014, effective from and after passage (approved April 23, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c) by substituting "Commercial Driver's License Information System" for "commercial driver's license information system." The Joint Committee ratified the correction at the July 24, 2014, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference in subsection (3)(b) by substituting "National Driver Register Act of 1982 (49 USCS Section 30304(a)(3)" for "National Driver Register Act of 1982 (23 USCS Section 401 note)." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-212. Records; notification.

(1) After suspending, revoking, or disqualifying a person from holding a commercial driver's license, the commissioner shall update the person's records to reflect that action within ten (10) days. After suspending, revoking or disqualifying a nonresident commercial driver's privileges, the commissioner shall notify the licensing authority of the state which issued the commercial driver's license or commercial driver certificate within ten (10) days, including in the notice both the disqualification period and the reason for the disqualification.

(2) Upon receipt from another jurisdiction of the prior record of an applicant for a commercial driver's license or a commercial learner's permit, the commissioner shall incorporate the prior record into the applicant's driver record and, in the case of adverse information, promptly implement any disqualification, licensing limitations, denials, and penalties that are required under 49 CFR, Part 384, that have not been applied by those jurisdictions where the applicant was previously licensed.

HISTORY: Laws, 2009, ch. 560, § 12, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-213. Notification of traffic convictions.

When any person operating a commercial motor vehicle or who holds a commercial driver's license issued by another state is convicted in this state of any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, the commissioner shall notify the driver licensing authority in the licensing state of the conviction within ten (10) days of the date of conviction.

HISTORY: Laws, 2009, ch. 560, § 13, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-214. Agreements.

The commissioner may enter into or make agreements, arrangements or declarations to carry out the provisions of this article.

HISTORY: Laws, 2009, ch. 560, § 14, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-215. Reciprocity.

(1) Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle in this state if the person has a valid commercial driver's license issued by:

(a) Any state of the United States;

(b) Any province or territory of Canada in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses; or

(c) The Licensia Federal de Conductor issued by the Republic of Mexico, if the person's license is not suspended, revoked, or canceled and if the person is not disqualified from driving a commercial motor vehicle and is not in violation of an out-of-service order.

(2) The commissioner shall give all out-of-state convictions full faith and credit and treat them for sanctioning purposes under this article as if they occurred in this state.

(3) The commissioner shall record disqualifications and convictions received from other jurisdictions regarding Mississippi operators.

HISTORY: Laws, 2009, ch. 560, § 15, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-216. Disqualification and suspension.

(1)(a) A person shall be disqualified from driving a commercial motor vehicle for a period of one (1) year if the person's license or permit to drive has been administratively suspended under Section 63-11-23 or the person has been convicted of a first violation of:

(i) Operating, attempting to operate, or being in actual physical control of a commercial motor vehicle on a highway with an alcohol concentration of four one-hundredths percent (0.04%) or more, or under the influence as provided in Section 63-11-30;

(ii) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(iii) Using a motor vehicle in the commission of any offense under state or federal law that is punishable by imprisonment for a term exceeding one (1) year;

(iv) Refusal to submit to a test to determine the operator's alcohol concentration, as provided in Title 63, Chapter 11, Mississippi Code of 1972;

(v) Operating, attempting to operate, or being in actual physical control of a motor vehicle on a highway with an alcohol concentration of eight one-hundredths percent (0.08%) or more, or under the influence of intoxicating liquor or other substance, as provided in Section 63-11-30;

(vi) Operating, attempting to operate, or being in actual physical control of a motor vehicle on a highway when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely as provided in Section 63-11-30;

(vii) Operating or attempting to operate a commercial motor vehicle while the license is revoked, suspended, cancelled, or disqualified;

(viii) Operating a commercial motor vehicle in a negligent manner resulting in a fatal injury.

(b) A person shall be disqualified from driving a commercial motor vehicle for three (3) years if convicted of a violation listed in subsection (1) of this section, if the violation occurred while transporting a hazardous material required to be placarded.

(c) A person shall be disqualified from driving a commercial motor vehicle for life if convicted of two (2) or more violations or a combination of them listed in subsection (1) of this section arising from two (2) or more separate occurrences.

(d) A person shall be disqualified from driving a commercial motor vehicle for a period of sixty (60) days if convicted of two (2) serious traffic violations, or one hundred twenty (120) days if convicted of three (3) serious traffic violations, arising from separate incidents occurring within a three-year period. A disqualification for three (3) serious traffic violations must be imposed consecutively to any other previous period of disqualification.

(e) A person shall be disqualified from driving a commercial motor vehicle for life if the person uses a motor vehicle in the commission of any offense under state or federal law that is punishable by imprisonment for a term exceeding one (1) year involving the manufacture, distribution, or dispensing of a regulated drug, or possession with intent to manufacture, distribute, or dispense a regulated drug and for which the person was convicted.

(f) A person who is disqualified from driving a commercial motor vehicle shall surrender the person's Mississippi commercial driver's license no later than the effective date of the disqualification. Upon receipt of the person's commercial driver's license, that person, if otherwise eligible, may apply for a non-CDL, and upon payment of sufficient fees receive the driver's license.

(g) The commissioner shall adopt rules establishing guidelines, including conditions, under which a disqualification for life under this section, except for a disqualification issued pursuant to paragraph (e) of this subsection, may be reduced to a period of not less than ten (10) years.

(h) A person shall be disqualified from driving a commercial motor vehicle for a period of sixty (60) days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.

(i) A person shall be disqualified from driving a commercial motor vehicle for a period of one hundred twenty (120) days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in a separate incident.

(j) A person shall be disqualified from driving a commercial motor vehicle for a period of one (1) year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

(k) A person who is simultaneously subject to a disqualification issued by the administrator of the Federal Motor Carrier Safety Administration pursuant to 49 CFR, Part 383.52 and a disqualification under any other provision of this section shall serve those disqualification periods concurrently.

(2)(a) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for one (1) year, if:

(i) The person is convicted of a first violation of operating, attempting to operate or being in actual physical control of a commercial motor vehicle on a highway with an alcohol concentration of four one-hundredths percent (0.04%) or more, or under the influence, as provided in Section 63-11-30; and

(ii) The person's commercial driver's license is issued by a state or country that does not issue commercial driver's licenses and disqualify persons in accordance with 49 CFR, Parts 383 and 384.

(b) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for three (3) years if the person is convicted of violating subsection (1) of this section, and the violation occurred while the person was transporting a hazardous material required to be placarded.

(c) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for life if the person is convicted a second time of violating subsection (1) of this section, and both convictions arise out of separate occurrences.

(d) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for sixty (60) days if the person is convicted of two (2) serious traffic violations, or for one hundred twenty (120) days if the person is convicted of three (3) serious traffic violations, arising from separate incidents occurring within a three-year period.

(e) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for life if the person uses a commercial motor vehicle in the commission of any offense under state or federal law that is punishable by imprisonment for a term exceeding one (1) year, involving the manufacture, distribution, or dispensing of a regulated drug, or possession with intent to manufacture, distribute, or dispense a regulated drug, and for which the person was convicted.

(f) In addition to the reasons specified in this section for suspension of the commercial driver's license, the commissioner shall be authorized to suspend the commercial driver's license of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a commercial driver's license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a commercial driver's license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a commercial driver's license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if the person is convicted of any crime under the Mississippi Human Trafficking Act in Section 97-3-54 et seq. or any felony involving a severe form of trafficking in persons, as defined by 22 USC 7102(11).

HISTORY: Laws, 2009, ch. 560, § 16; Laws, 2013, ch. 454, § 1, eff from and after July 1, 2013; Laws, 2022, ch. 407, § 3, eff from and after July 1, 2022.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication corrected typographical errors in (1)(g) by substituting, "...under which a disqualification for life under this section, except for a disqualification issued pursuant to paragraph (e) of this subsection, may be reduced" for "...under which a disqualification for life under this section, except that a disqualification issued pursuant to paragraph (e) of this subsection may be reduced." The Joint Legislative Committee on Compilation, Revision and Publication of Legislation at their July 22, 2010, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (3) by substituting "Section 97-3-54 et seq." for "Sections 97-3-54 et seq." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

Laws of 2022, ch. 407, § 4, provides:

"SECTION 4. Section 1 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2022.

Amendment Notes — The 2022 amendment added (3).

§ 63-1-217. Suspensions and disqualifications to run concurrently.

A suspension of a person's operating privilege or license and a disqualification imposed under Section 63-1-216 imposed for the same violation, shall run concurrently.

HISTORY: Laws, 2009, ch. 560, § 17, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-218. Effective date of disqualification; hearing.

(1) A disqualification from driving a commercial motor vehicle shall be effective on not less than ten (10) days' notice.

(2) If requested, a hearing on the disqualification shall be conducted, under Section 63-1-53. The scope of the hearing shall be limited to verification of the conviction.

(3) A person aggrieved by a decision resulting from a hearing under this section may have the decision reviewed on the record. The appeal shall be to the Circuit Court of the First Judicial District of Hinds County or, in the discretion of the licensee, to the circuit court of the county in which the licensee resides or has a principal place of business.

HISTORY: Laws, 2009, ch. 560, § 18, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-219. Disqualification from operation of vehicle.

(1) Any person convicted for violating an out-of-service order shall be disqualified as follows except as provided in subsection (2) of this section:

(a) A person shall be disqualified from driving a commercial motor vehicle for a period of ninety (90) days if convicted of a first violation of an out-of-service order.

(b) A person shall be disqualified for a period of one (1) year if convicted of a second violation of an out-of-service order during any ten-year period, arising from separate incidents.

(c) A person shall be disqualified for a period of three (3) years if convicted of a third or subsequent violation of an out-of-service order during any ten-year period, arising from separate incidents.

(2) Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial motor vehicle designed or used to transport sixteen (16) or more passengers, including the driver, shall be disqualified as follows:

(a) A person shall be disqualified for a period of one hundred eighty (180) days if convicted of a first violation of an out-of-service order.

(b) A person shall be disqualified for a period of three (3) years if convicted of a second or subsequent violation of an out-of-service order during any ten-year period, arising from separate incidents.

HISTORY: Laws, 2009, ch. 560, § 19, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-220. Penalties.

(1) Notwithstanding any other provision of law to the contrary, any driver who violates or fails to comply with an out-of-service order is subject to a penalty of One Thousand Five Hundred Dollars ($1,500.00), in addition to disqualification under this article.

(2) Any employer who violates an out-of-service order, or who knowingly requires or permits a driver to violate or fail to comply with an out-of-service order, is subject to a penalty of Four Thousand Dollars ($4,000.00).

(3) The fine imposed for a speeding violation of a commercial motor vehicle operating in excess of fifteen (15) miles per hour over the legally posted speed limit on any highway shall be one and one-half (1-½) times the fine imposed for a speeding violation in other vehicles.

HISTORY: Laws, 2009, ch. 560, § 20, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-221. Applicants for school bus endorsements.

(1) An applicant for a school bus endorsement shall satisfy the following requirements:

(a) Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(b) Pass the knowledge test covering the following topics, at minimum:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and passenger safety devices required for school buses by state or federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and federal laws and regulations related to traversing safely highway rail grade crossings.

(c) Pass a skills test in a school bus of the same vehicle group as the applicant will operate.

(2) The department may waive the skills test required in subsection (1)(a) of this section for an applicant who:

(a) Is currently licensed, has experience operating a school bus, and has a good operating record;

(b) Certifies, and whose certification is verified by the department, that, during the two-year period immediately prior to applying for the school bus endorsement, the applicant:

(i) Held a valid commercial driver's license with a passenger endorsement to operate a school bus representative of the group the applicant will be operating;

(ii) Has not had the applicant's operator's license or commercial driver's license suspended, revoked, or cancelled or been disqualified from operating a commercial motor vehicle;

(iii) Has not been convicted of any offense that would require disqualification under Section 63-1-216 or 49 CFR, Part 383.51(b);

(iv) Has not had more than one (1) conviction for a serious traffic violation while operating any type of motor vehicle;

(v) Has not had any conviction for a violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident;

(vi) Has not been convicted of any motor vehicle traffic violation that resulted in an accident; and

(vii) Has been regularly employed as a school bus driver and provides evidence of such employment.

HISTORY: Laws, 2009, ch. 560, § 21, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-222. Deferring imposition of sentence.

No judge or court may utilize the provisions of Section 63-1-71(3) or 63-9-11(3) or any other program to defer imposition of sentence or judgment if the defendant holds a commercial driver's license or was operating a commercial motor vehicle when the violation occurred and is charged with violating any state or local traffic law other than a parking violation.

HISTORY: Laws, 2009, ch. 560, § 22, eff from and after July 1, 2009.

Editor's Notes -- Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-223. Penalty for authorizing railroad crossing violations.

Any employer who knowingly requires, allows, authorizes or permits a driver to operate a commercial motor vehicle in violation of Section 77-9-249 is subject to a penalty of not more than Four Thousand Dollars ($4,000.00).

HISTORY: Laws, 2009, ch. 560, § 23, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-224. Implied consent to chemical tests; administration of tests; effect of refusal to submit to test.

(1) A person who holds a commercial driver's license and drives a motor vehicle within this state or a person who drives a commercial motor vehicle within this state for which a commercial learner's permit or a commercial driver's license is required under this article is deemed to have given his consent to a chemical test or tests of his breath for the purpose of determining the alcohol content of his blood. A person may give his consent to a chemical test or tests of his blood or urine for the purpose of determining the presence in his body of any other substance which would impair a person's ability to drive a motor vehicle.

(2) The tests shall be administered, and all procedures and proceedings relating thereto shall be performed, as nearly as practicable, in accordance with the provisions of the Mississippi Implied Consent Law. However, from and after April 1, 1992, refusal of any such person to submit to such test or a test given which indicates that such person was driving such motor vehicle within this state with any measurable or detectable amount of alcohol in his system or while under the influence of a controlled substance shall require such person to be immediately placed out of service for twenty-four (24) hours and shall require suspension of the commercial driver's license of such person for the applicable period of time prescribed in this article.

HISTORY: Laws, 2009, ch. 560, § 24, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

Cross References — Mississippi Implied Consent Law, see §§ 63-11-1 et seq.

§ 63-1-225. Classification of offenses under this article; relationship to other laws.

Except as otherwise specifically provided by this article, any violation of this article for which the only penalty under this article is the requirement that the commissioner suspend the commercial learner's permit or commercial driver's license of a person shall not, for the purposes of this article, constitute a criminal offense. However, if a violation of this article also constitutes a criminal offense under the provisions of some other law, then any criminal penalty which may be imposed for violation of such criminal law shall be in addition to suspension of a person's license under this article.

If violation of any law of this state other than a violation of this article requires that the driver's license or driving privileges of a person be suspended, cancelled or revoked, then any suspension, cancellation or revocation imposed for violation of such law shall also result in suspension, revocation or cancellation of the person's commercial learner's permit or commercial driver's license under the provisions of this article for the same period of time and to run concurrently therewith.

If any person is disqualified under the provisions of this article and the violation is not an offense for which a person's driver's license or driving privilege is suspended, revoked or cancelled under the provisions of some law other than the provisions of this article, then the person may apply for and obtain, upon meeting all qualifications as required by law, any type of driver's license other than a commercial driver's license or commercial learner's permit issued under the provisions of this article.

HISTORY: Laws, 2009, ch. 560, § 25, eff from and after July 1, 2009.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

§ 63-1-226. Use of certain facilities and property for commercial driver's license testing sites.

The commissioner is authorized to make use of the facilities and property upon which are located inspection stations, as prescribed in Sections 27-5-71 and 27-5-73, for the purpose of commercial driver's license testing sites under this article. The State Tax Commission shall cooperate with the Commissioner of Public Safety in making such property and facilities available for such use; however, the use of the inspection stations by the Commissioner of Public Safety shall not unreasonably interfere with the duties of the State Tax Commission.

HISTORY: Laws, 2009, ch. 560, § 26, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence by substituting "this article" for "the Mississippi Commercial Driver's License Law." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Editor's Notes — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

ARTICLE 7

EMPOWERING REENTRY THROUGH LICENSING ACT

Sec.

63-1-301. Short title.
63-1-303. Definitions.
63-1-305. Provisional license; duration of license; permitted use of license.
63-1-307. Ineligibility for provisional license.
63-1-309. Duties of Department of Public Safety; no fee for provisional license; revocation of provisional license.
63-1-311. Duties of Department of Correction.

§ 63-1-301. Short title.

This article shall be known and may be cited as the "Empowering Reentry Through Licensing Act."

HISTORY: Laws, 2021, ch. 390, § 1, eff from and after July 1, 2021.

§ 63-1-303. Definitions.

As used in this article:

(a) "Department" means the Department of Public Safety.

(b) "Discharge plan" shall have the meaning provided in Section 47-7-33.1.

(c) "Driver's license" means a Class R license as authorized in Section 63-1-9.

(d) "Eligible person" means a person who has served a term of at least one (1) year and whose driver's license will be or has been suspended, revoked or cancelled for any reason upon the person's release. An "eligible person" must be:

(i) Within one hundred eighty (180) days of release from incarceration; or

(ii) On probation or parole, having been released from incarceration within the previous six (6) months.

An "eligible person" must not be within the category of persons described by Section 63-1-307.

(e) "Provisional license" means a license as authorized in Section 63-1-305.

(f) "Provisional licensee" means the holder of a provisional driver's license.

(g) "Release from incarceration" shall mean release from a Mississippi Department of Corrections facility or an MDOC-approved residential program.

HISTORY: Laws, 2021, ch. 390, § 2, eff from and after July 1, 2021.

§ 63-1-305. Provisional license; duration of license; permitted use of license.

(1) A provisional license shall be valid for six (6) months from the date of a person's release from incarceration.

(2) A provisional license shall permit the provisional licensee to drive a motor vehicle directly to and directly home from his or her residence and:

(a) A place where he or she is employed or will potentially be employed;

(b) A place where the licensee attends school;

(c) A place where the licensee's minor child attends school or day care, provided that there are no separate laws prohibiting such travel;

(d) A scheduled meeting with the licensee's probation or parole officer or other supervisor;

(e) Any place, location or meeting that the licensee's probation or parole officer has authorized the person to travel to or attend; or

(f) A place of religious instruction or worship.

(3) This article shall not apply to any type of commercial operator's license.

HISTORY: Laws, 2021, ch. 390, § 3, eff from and after July 1, 2021.

§ 63-1-307. Ineligibility for provisional license.

A person is ineligible for a provisional license under this article if:

(a) The person was convicted of vehicular homicide, or a third or subsequent violation of any other law that prohibits operating a vehicle while intoxicated or under the influence of alcohol or drugs; or

(b) A person's driver's license has been suspended, revoked or cancelled pursuant to a report of conviction received pursuant to Article III of the Driver License Compact.

HISTORY: Laws, 2021, ch. 390, § 4, eff from and after July 1, 2021.

Cross References Driver License Compact, see §§ 63-1-101 through 63-1-113.

§ 63-1-309. Duties of Department of Public Safety; no fee for provisional license; revocation of provisional license.

(1) The department shall:

(a) Issue a provisional license to an eligible person upon receipt of an application;

(b) Defer payment of all fees, penalties and charges relating to the issuance of a provisional license under this section that are incurred prior to or during the term of incarceration and owed by the applicant to the department;

(c) Inform the provisional licensee that the licensee has six (6) months from the date of release from incarceration to clear his or her driving record of any suspensions, revocations or cancellations in order to be eligible for a driver's license issued under Section 63-1-9;

(d) Shall issue a driver's license upon the collection of the standard fees and handling charges at the end of the term of the provisional license if the provisional licensee qualifies for full and unrestricted driving privileges and has paid any fees owed under paragraph (c) of this subsection;

(e) Develop procedures to:

(i) Issue a driver's license after the collection of the standard fees and handling charges to any person who, upon release from incarceration, qualifies for full and unrestricted driving privileges without the need of a provisional license; and

(ii) Renew the driver's license of an inmate after the collection of the standard fees and handling charges; and

(f) Promulgate the rules and regulations necessary to administer this article.

(2) The department shall not assess an eligible person a fee for a provisional license.

(3)(a) The department may revoke the provisional license if the licensee commits an act or omission that causes the community supervision or parole of the holder of the provisional license to be revoked. The provisional licensee's probation or parole officer shall notify the department if the supervision or parole status has been revoked. The court shall notify the department if the provisional licensee is charged with a new felony or any moving traffic violation.

(b) If the department revokes a provisional license issued pursuant to this section, the holder shall not be entitled to receive another provisional license.

(4) The department shall, in conjunction with the Department of Corrections, provide to each person admitted to the Department of Corrections the person's current driver's license status, a detailed driver's history and any outstanding warrant information available on the National Criminal Information Center Database.

HISTORY: Laws, 2021, ch. 390, § 5, eff from and after July 1, 2021.

§ 63-1-311. Duties of Department of Correction.

The Mississippi Department of Corrections shall:

(a) Identify eligible persons to apply for a provisional license under this section.

(b) Provide any inmate opportunity to renew the inmate's driver's license under Section 63-1-309(1)(e).

(c) Promulgate any necessary rules or regulations to administer this article.

HISTORY: Laws, 2021, ch. 390, § 6, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (b) by substituting “inmate's” for “inmates.” The Joint Committee ratified the correction at its August 20, 2021, meeting.

CHAPTER 2.

MANDATORY USE OF SAFETY SEAT BELTS

Sec.

63-2-1. Requirement of use of safety seat belt system by operator and passengers in passenger motor vehicle; protection of children.

63-2-3. Duty, standard of care, right or liability between operator and passenger; contributory or comparative negligence; entry of violation on driving record.

63-2-5. Education program; erection of highway signs notifying public of seat-belt-use requirement; notices of requirement accompanying vehicle license tags or decals.

63-2-7. Offenses and penalties; recording of violations.

§ 63-2-1. Requirement of use of safety seat belt system by operator and passengers in passenger motor vehicle; protection of children.

(1) When a passenger motor vehicle is operated in forward motion on a public road, street or highway within this state, every operator and every passenger shall wear a properly fastened safety seat belt system, required to be installed in the vehicle when manufactured pursuant to Federal Motor Vehicle Safety Standard 208.

(2) "Passenger motor vehicle" for purposes of this chapter means a motor vehicle designed to carry fifteen (15) or fewer passengers, including the driver, but does not include motorcycles that are not autocycles as defined in Section 63-3-103, mopeds, all-terrain vehicles or trailers.

(3) This section shall not apply to:

(a) Vehicles which may be registered for "farm" use, including "implements of husbandry" as defined in Section 63-21-5(d), and "farm tractors" as defined in Section 63-3-105(a);

(b) An operator or passenger possessing a written verification from a licensed physician that he is unable to wear a safety belt system for medical reasons;

(c) A passenger car operated by a rural letter carrier of the United States Postal Service or by a utility meter reader while on duty;

(d) Buses; or

(e) A child who is required to be protected by the use of a child passenger restraint device or system or a belt-positioning booster seat system under the provisions of Sections 63-7-301 through 63-7-311.

HISTORY: Laws, 1990, ch. 436, § 1; Laws, 1998, ch. 501, § 1; Laws, 2008, ch. 520, § 2; Laws, 2015, ch. 406, § 6; Laws, 2017, ch. 403, § 1, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 403, § 3, provides:
"SECTION 3. This act shall be known as 'Harlie's Law.' "

JUDICIAL DECISIONS

ANALYSIS

1. Applicability.
2. Preservation for review.
3. Probable cause.

1. Applicability.

In a personal injury action, the trial court properly refused to grant certain jury instructions because the seat belt law–Miss. Code Ann. § 63-2-1(2)–did not apply to a shuttle bus carrying more than 15 passengers, and the bus owner could not have been subjected to a claim of contributory negligence because of the provisions of Miss. Code Ann. § 63-2-3. Boyd Tunica, Inc. v. Premier Transp. Servs., 30 So. 3d 1242, 2010 Miss. App. LEXIS 123 (Miss. Ct. App. 2010).

2. Preservation for review.

Defendant's convictions for driving under the influence of an intoxicating liquor, careless driving, and driving without a seatbelt were appropriate because defendant failed to raise any of the issues he complained of on appeal in his motion for a directed verdict or new trial and because the facts of the case provided sufficient evidence to convict. Jones v. State, 958 So. 2d 840, 2007 Miss. App. LEXIS 423 (Miss. Ct. App. 2007).

3. Probable cause.

Controlled substances and firearm seized during a traffic stop was properly admitted because a deputy had sufficient reason and probable cause to stop defendant's car when he observed defendant violating the seat belt law; when defendant drove the vehicle without wearing his seat belt he committed a traffic violation, which provided the deputy with probable cause to stop his car. Wallace v. State, — So. 3d —, 2019 Miss. App. LEXIS 170 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 419 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 449 (Miss. 2019).

Stop of defendant's vehicle was not pretextual because the deputy knew the confidential informant and found that person reliable; the deputy testified that he followed defendant before turning on his blue lights and did not see any traffic violations during that span, but he realized that when he was driving by, the driver was not wearing his seatbelt, and that was sufficient for purposes of the original stop. Wallace v. State, — So. 3d —, 2019 Miss. App. LEXIS 170 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 419 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 449 (Miss. 2019).

Denial of defendant's motion to suppress evidence seized at the time of defendant's arrest during a traffic stop was appropriate because a police officer had probable cause to initiate a traffic stop, as the officer noticed that neither the driver of a car, nor defendant, who was a passenger in the car, was wearing a seat belt, and a pouch containing methamphetamine, which the officer discovered in the car after a pouch containing methamphetamine fell out from the bottom of defendant's pants, was in plain view. Nowell v. State, 246 So. 3d 77, 2018 Miss. App. LEXIS 210 (Miss. Ct. App. 2018).

OPINIONS OF THE ATTORNEY GENERAL

Violators of seat belt law can not be adjudicated guilty because there is no criminal offense and no fines or assessments may be imposed; charges should be dismissed for failure to allege a crime. Stephens, Jan. 12, 1994, A.G. Op. #93-0889.

If a driver or a front-seat passenger is not wearing a seatbelt, the driver may be cited for the seatbelt violation only if he is cited for another non-seatbelt violation, and he may not be convicted of the seatbelt violation unless he is also convicted of the non-seatbelt violation; however, if a child between the ages of four and eight is not wearing a seatbelt, regardless of where he is seated, the driver of the car may be cited and convicted without a violation of any other non-seatbelt law. Dykes, Feb. 4, 2000, A.G. Op. #2000-0031.

A person can be charged with the failure to utilize a child restraint device or seat belt and child abuse without violating the double jeopardy clause. Bishop, Feb. 16, 2001, A.G. Op. #2001-0733.

A law enforcement officer may stop a motorist for a seatbelt violation and upon noticing another violation or some other illegal activity, the officer may cite the motorist for the other violation and the seatbelt violation. Phillips, Aug. 12, 2005, A.G. Op. 05-0419.

RESEARCH REFERENCES

ALR.

Liability under state law for injuries resulting from defective automobile seatbelt, shoulder harness, or restraint system. 48 A.L.R.5th 1.

Practice References.

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Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-2-3. Duty, standard of care, right or liability between operator and passenger; contributory or comparative negligence; entry of violation on driving record.

This chapter shall not be construed to create a duty, standard of care, right or liability between the operator and passenger of any passenger motor vehicle which is not recognized under the laws of the State of Mississippi as such laws exist on March 20, 1990, or as such laws may at any time thereafter be constituted by statute or court decision. Failure to provide and use a seat belt restraint device or system shall not be considered contributory or comparative negligence, nor shall the violation be entered on the driving record of any individual.

HISTORY: Laws, 1990, ch. 436, § 2, eff from and after passage (approved March 20, 1990).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence.

1. In general.

In a personal injury action, bus owner's voluntary enactment of a seat-belt policy, not required by statute, did not vitiate the protection of Miss. Code Ann. § 63-2-3 that would be in place were its passengers required by statute to wear seat belts. Boyd Tunica, Inc. v. Premier Transp. Servs., 30 So. 3d 1242, 2010 Miss. App. LEXIS 123 (Miss. Ct. App. 2010).

In a personal injury action, the trial court properly refused to grant certain jury instructions because the seat belt law–Miss. Code Ann. § 63-2-1(2)–did not apply to a shuttle bus carrying more than 15 passengers, and the bus owner could not have been subjected to a claim of contributory negligence because of the provisions of Miss. Code Ann. § 63-2-3. Boyd Tunica, Inc. v. Premier Transp. Servs., 30 So. 3d 1242, 2010 Miss. App. LEXIS 123 (Miss. Ct. App. 2010).

This section applies to crashworthiness actions. Estate of Hunter v. GMC, 729 So.

2d 1264, 1999 Miss. LEXIS 18 (Miss. 1999).

In order to preserve the matter for appeal, the plaintiff was not required to make a contemporaneous objection to the introduction of evidence where he had already filed a motion in limine pertaining to such evidence. Jones v. Panola County, 725 So. 2d 774, 1998 Miss. LEXIS 244 (Miss. 1998).

In an action to recover for injuries sustained by the plaintiff when his vehicle collided with a gravel pile the plaintiff was entitled to reversal on the basis of the improper introduction of evidence that he was not using his seat belt at the time of the collision. Jones v. Panola County, 725 So. 2d 774, 1998 Miss. LEXIS 244 (Miss. 1998).

Statute barred cross-examination of passenger who brought action arising from single-vehicle accident as to whether she was wearing seat belt at time of accident. Roberts v. Grafe Auto Co., 701 So. 2d 1093, 1997 Miss. LEXIS 261 (Miss. 1997).

2. Evidence.

Trial court was correct to admit evidence tending to show that the family of a minor girl injured in a car accident did not regularly use their seat belts, but it should have given a cautionary instruction that the evidence was admissible for the limited purpose of showing that, even if the warnings had been adequate, the family would not have heeded them. Palmer v. Volkswagen of Am., Inc., 904 So. 2d 1077, 2005 Miss. LEXIS 247 (Miss. 2005).

Where a minor child was killed by an air bag that deployed when the car that she was riding in was involved in an accident while her teenage older sister was driving, evidence of the decedent's failure to wear a seat belt was relevant and admissible, the admission of evidence of the driver's non-use of a seat belt was error, and the admission of photographs of the seat belt latches and an expert's opinion that the latches showed insufficient scratches for the family to have used the seat belts regularly was error. Palmer v. Volkswagen of Am., Inc., 905 So. 2d 564, 2003 Miss. App. LEXIS 752 (Miss. Ct. App. 2003), aff'd in part and rev'd in part, 2005 Miss. LEXIS 21 (Miss. Jan. 13, 2005), aff'd in part and rev'd in part, 904 So. 2d 1077, 2005 Miss. LEXIS 247 (Miss. 2005).

The statute provides that failure to use a seat belt may not be considered as evidence of contributory or comparative negligence; however, it does not purport to bar the admission of seat belt non-usage in all cases and does not provide that the use of a seat belt may not be considered. Herring v. Poirrier, 797 So. 2d 797, 2000 Miss. LEXIS 176 (Miss. 2000).

Evidence of seat belt non-usage may constitute relevant evidence in some, but by no means all or even most, cases, so long as (1) the evidence has some probative value other than as evidence of negligence, (2) this probative value is not substantially outweighed by its prejudicial effect and is not barred by some other rule of evidence, and (3) appropriate limiting instructions are given to the jury, barring the consideration of seat belt non-usage as evidence of negligence. Estate of Hunter v. GMC, 729 So. 2d 1264, 1999 Miss. LEXIS 18 (Miss. 1999).

§ 63-2-5. Education program; erection of highway signs notifying public of seat-belt-use requirement; notices of requirement accompanying vehicle license tags or decals.

The Department of Public Safety shall initiate an education program designed to encourage the use of safety belts with emphasis on the effectiveness of safety belts, the monetary savings and other benefits to the public. Funds for such educational program shall be made available through the office of the Governor's representative for highway safety programs.

The State Highway Commission is authorized to direct the Highway

Department to erect signs along the highways of this state notifying the traveling public that Mississippi is a mandatory seat-belt-use state.

The State Tax Commission shall provide notices of the requirement for safety belt use which shall accompany the delivery of a passenger motor vehicle license tag or decal.

HISTORY: Laws, 1990, ch. 436, § 3, eff from and after passage (approved March 20, 1990).

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation, and whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 63-2-7. Offenses and penalties; recording of violations.

(1) A violation of this chapter shall be a misdemeanor, punishable by a fine of Twenty-five Dollars ($25.00) upon conviction; however, only the operator of a vehicle may be fined for a violation of this chapter by the operator and any passengers. The maximum fine that may be imposed against the operator of a vehicle for a violation of this chapter by the operator or for a violation of this chapter by one or more passengers shall be Twenty-five Dollars ($25.00) in the aggregate.

(2) A violation of this chapter shall not be entered on the driving record of any individual so convicted, nor shall any state assessment provided for by Section 99-19-73, or any other state law, be imposed or collected.

HISTORY: Laws, 1990, ch. 436, § 4; Laws, 1994, ch. 567, § 1; Laws, 1998, ch. 501, § 2; Laws, 2006, ch. 302, § 1; Laws, 2008, ch. 520, § 3; Laws, 2017, ch. 403, § 2, eff from and after July 1, 2017.

Editor's Notes — Laws of 2006, ch. 302, § 2 provides as follows:

"SECTION 2. All federal money that the State of Mississippi receives as an incentive grant for the enactment of a primary seat belt law under Section 1 of House Bill No. 409, 2006 Regular Session, shall be expended for highway safety infrastructure improvements except as otherwise conditioned or restricted by federal law or federal rules and regulations governing the expenditure of such funds."

Laws of 2017, ch. 403, § 3, provides:

"SECTION 3. This act shall be known as 'Harlie's Law.' "

OPINIONS OF THE ATTORNEY GENERAL

A court clerk should not accept a plea of guilty on a seat belt violation and accept the fine and costs when the clerk knows that the charge has been made without any other charge being made at the same time. Anderson, July 23, 1999, A.G. Op. #99-0278.

If a driver or a front-seat passenger is not wearing a seatbelt, the driver may be cited for the seatbelt violation only if he is cited for another non-seatbelt violation, and he may not be convicted of the seatbelt violation unless he is also convicted of the non-seatbelt violation; however, if a child between the ages of four and eight is not wearing a seatbelt, regardless of where he is seated, the driver of the car may be cited and convicted without a violation of any other non-seatbelt law. Dykes, Feb. 4, 2000, A.G. Op. #2000-0031.

If a child between the ages of four and eight is not wearing a seat belt, regardless of where he is seated, the driver of the car may be cited and convicted under Section 63-2-1 without a violation of any other non-seat belt law. Gordon, Sept. 14, 2001, A.G. Op. #01-0573.

If a driver or a front-seat passenger is not wearing a seat belt as required by statute, the driver may be cited for the seat belt violation only if he is cited for another non-seat belt violation and may not be convicted of the seat belt violation unless he is also convicted of the non-seat belt violation; further, an officer may not use a primary seat belt violation in order to charge an offender with a secondary seat belt violation. Gordon, Sept. 14, 2001, A.G. Op. #01-0573.

CHAPTER 3.

TRAFFIC REGULATIONS AND RULES OF THE ROAD

Article 1.	General Provisions.	63-3-1
Article 3.	Definitions.	63-3-101
Article 5.	Obedience to and Effect of Traffic Laws.	63-3-201
Article 7.	Traffic Signs, Signals and Markings.	63-3-301
Article 9.	Accidents and Reports.	63-3-401
Article 11.	Restrictions on Speed; Use of Radar.	63-3-501
Article 13.	Driving on Right Side of Roadway: Overtaking and Passing; Following.	63-3-601
Article 15.	Starting and Turning; Signaling.	63-3-701
Article 17.	Right-of-Way.	63-3-801
Article 19.	Stopping, Standing and Parking.	63-3-901
Article 21.	Required Stops.	63-3-1001
Article 23.	Pedestrians' Rights and Duties.	63-3-1101
Article 25.	Reckless or Careless Driving and Miscellaneous Rules.	63-3-1201
Article 27.	John Paul Frerer Bicycle Safety Act.	63-3-1301
Article 29.	Operation of Personal Delivery Devices.	63-3-1331

ARTICLE 1.

GENERAL PROVISIONS.

Sec.	
63-3-1.	Short title.
63-3-3.	Construction of chapter.
63-3-5.	Application of provisions of chapter relating to operation of vehicles.
63-3-7.	Compilation, printing and distribution of provisions of chapter.
63-3-9.	Teaching of provisions of chapter in public schools.
63-3-11.	Right to recover damages in civil suit unaffected by provisions of chapter.

§ 63-3-1. Short title.

This chapter may be cited as the Uniform Highway Traffic Regulation Law – Rules of the Road.

HISTORY: Codes, 1942, § 8126; Laws, 1938, ch. 200.

Cross References — Uniform Highway Traffic Regulation Law – sizes, weight and load regulations, see §§ 63-5-1 et seq.

Uniform Highway Traffic Regulation Law – equipment and identification regulations, see §§ 63-7-1 et seq.

Uniform Highway Traffic Regulation Law – Traffic Violations Procedure, see §§ 63-9-1 et seq.

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CJS.

60 C.J.S., Motor Vehicles §§ 43 et seq.

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Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-3. Construction of chapter.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: Codes, 1942, § 8282; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

Mississippi Transportation Commission and the Mississippi Department of Transportation breached the ministerial duties imposed by Miss. Code Ann. § 65-1-65 because the statute applied to the portion of the highway that was under construction and imposed a ministerial duty of maintenance and repair. Miss. Transp. Comm'n v. Adams, 197 So. 3d 406, 2016 Miss. LEXIS 232 (Miss. 2016).

§ 63-3-5. Application of provisions of chapter relating to operation of vehicles.

The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of Articles 9 and 25 shall apply upon highways and elsewhere throughout the state.

HISTORY: Codes, 1942, § 8145; Laws, 1938, ch. 200.

OPINIONS OF THE ATTORNEY GENERAL

Reckless driving and careless driving may be enforced on commercial parking lots and the like; similarly, a law enforcement officer may investigate and complete an accident report for an accident that occurs on private property. Godfrey, Oct. 13, 2000, A.G. Op. #2000-0609.

Accident reports should be made for accidents occurring in parking lots. Conerly, Jan. 23, 2004, A.G. Op. 04-0002.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 221.

§ 63-3-7. Compilation, printing and distribution of provisions of chapter.

The Commissioner of Public Safety is hereby authorized and directed to compile in a condensed form the Rules of the Road as set out by this chapter and have sufficient copies printed in pocket size booklet form. The booklets shall be made available to the various law enforcement departments, other agencies and members of the public. The Department of Public Safety may charge another department or agency an amount not exceeding the actual costs incurred by the department in compiling, printing and distributing the booklets; however, no charge may be made by the Department of Public Safety or any other department or agency for distribution of the booklets to the public. The Department of Public Safety also may compile a condensed form of the "Rules of the Road" in electronic format, which shall be accessible by law enforcement departments, other agencies and the public without charge.

HISTORY: Codes, 1942, § 8284; Laws, 1938, ch. 200; Laws, 2002, ch. 446, § 1, eff from and after July 1, 2002.

§ 63-3-9. Teaching of provisions of chapter in public schools.

The provisions of this chapter shall be taught in the eighth grade of each and every public school of this state. The state superintendent of public education and the county superintendent of each county are hereby directed and required to carry out the provisions of this section.

HISTORY: Codes, 1942, § 8285; Laws, 1938, ch. 200.

§ 63-3-11. Right to recover damages in civil suit unaffected by provisions of chapter.

Nothing in this chapter shall be so construed as to curtail or abridge the right of any person to prosecute a civil suit for damages by reason of injuries to person or property resulting from the negligent use of the highways by any motor vehicle, or its owner, or his employee or agent.

HISTORY: Codes, Hemingway's 1917, § 5785; 1930, § 5588; 1942, § 1742; Laws, 1916, ch. 116.

JUDICIAL DECISIONS

1. In general.
Automobile held not dangerous instrumentality, rendering owner liable for driver's negligent use. Vicksburg Gas Co. v. Ferguson, 140 Miss. 543, 106 So. 258, 1925 Miss. LEXIS 289 (Miss. 1925).

RESEARCH REFERENCES

ALR.

Nonmonetary benefits or contributions by rider as affecting his status under automobile guest statute. 39 A.L.R.3d 1083.

Automobile guest statute: status of rider as affected by payment, amount of which is not determined by expenses incurred. 39 A.L.R.3d 1177.

Payments on expense-sharing basis as affecting guest status of automobile passenger. 39 A.L.R.3d 1224.

Motorist's liability for striking person lying in road. 41 A.L.R.4th 303.

ARTICLE 3.

DEFINITIONS.

General Provisions. 63-3-101
Vehicles, Equipment and the Like Defined. 63-3-103
Governmental Agencies, Owners, Police Officers and Other Persons Defined. 63-3-115
Highways, Districts, Signals, and the Like Defined. 63-3-123

GENERAL PROVISIONS

Sec.
63-3-101. Applicability of definitions.

§ 63-3-101. Applicability of definitions.

The following words and phrases when used in this chapter shall, for purposes of this chapter, have the meanings respectively ascribed to them in this article.

HISTORY: Codes, 1942, § 8126; Laws, 1938, ch. 200.

VEHICLES, EQUIPMENT AND THE LIKE DEFINED

Sec.
63-3-103. Vehicles.
63-3-105. Tractors.
63-3-107. Trailers.
63-3-109. Railroads.
63-3-111. Tires.
63-3-113. Explosives and flammable liquids.

§ 63-3-103. Vehicles.

(a) “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

(b) “Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term “motor vehicle” shall not include electric personal assistive mobility devices, personal delivery devices or electric bicycles.

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor. The term "motorcycle" includes motor scooters as defined in subsection (j) of this section. The term "motorcycle" shall not include electric bicycles or personal delivery devices.

(d) "Authorized emergency vehicle" means every vehicle of the fire department (fire patrol), every police vehicle, every 911 Emergency Communications District vehicle, every such ambulance and special use EMS vehicle as defined in Section 41-59-3, every Mississippi Emergency Management Agency vehicle as is designated or authorized by the Executive Director of MEMA and every emergency vehicle of municipal departments or public service corporations as is designated or authorized by the commission or the chief of police of an incorporated city.

(e) "School bus" means every motor vehicle operated for the transportation of children to or from any school, provided same is plainly marked "School Bus" on the front and rear thereof and meets the requirements of the State Board of Education as authorized under Section 37-41-1.

(f) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle and includes travel trailers, fifth-wheel trailers, camping trailers, truck campers and motor homes.

(g) "Motor home" means a motor vehicle that is designed and constructed primarily to provide temporary living quarters for recreational, camping or travel use.

(h) "Electric assistive mobility device" means a self-balancing two-tandem wheeled device, designed to transport only one (1) person, with an electric propulsion system that limits the maximum speed of the device to fifteen (15) miles per hour.

(i) "Autocycle" means a three-wheel motorcycle with a steering wheel, nonstraddle seating, rollover protection and seat belts.

(j) "Motor scooter" means a two-wheeled vehicle that has a seat for the operator, one (1) wheel that is ten (10) inches or more in diameter, a step-through chassis, a motor with a rating of two and seven-tenths (2.7) brake horsepower or less if the motor is an internal combustion engine, an engine of 50cc or less and otherwise meets all safety requirements of motorcycles. The term "motor scooter" shall not include electric bicycles or personal delivery devices.

(k) "Platoon" means a group of individual motor vehicles traveling in a unified manner at electronically coordinated speeds at following distances that are closer than would be reasonable and prudent without such coordination.

(*l*) "Electric bicycle" means a bicycle or tricycle equipped with fully operable pedals, a saddle or seat for the rider, and an electric motor of less than seven hundred fifty (750) watts that meets the requirements of one (1) of the following three (3) classes:

(i) "Class 1 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of twenty (20) miles per hour.

(ii) "Class 2 electric bicycle" means an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of twenty (20) miles per hour.

(iii) "Class 3 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of twenty-eight (28) miles per hour.

(m) "Personal delivery device" means a device:

(i) Solely powered by an electric motor;

(ii) Intended to be operated primarily on sidewalks, crosswalks, and other pedestrian areas to transport cargo;

(iii) Intended primarily to transport property on public rights-of-way, and not intended to carry passengers; and

(iv) Capable of navigating with or without the active control or monitoring of a natural person.

(n) "Personal delivery device operator" means a person or entity that exercises physical control or monitoring over the operation of a personal delivery device, excluding a person or entity that requests or receives the services of a personal delivery device, arranges for or dispatches the requested services of a personal delivery device, or stores, charges or maintains a personal delivery device.

HISTORY: Codes, 1942, § 8127; Laws, 1938, ch. 200; Laws, 1973, ch. 338, § 1; Laws, 1976, ch. 348; Laws, 1980, ch. 316, § 2; Laws, 1983, ch. 350, § 1; Laws, 1986, ch. 459, § 35; Laws, 2000, ch. 318, § 1; Laws, 2003, ch. 485, § 9; Laws, 2004, ch. 425, § 3; Laws, 2012, ch. 452, § 1; Laws, 2015, ch. 406, § 1; Laws, 2015, ch. 464, § 3, eff from and after July 1, 2015; Laws, 2018, ch. 304, § 1, eff from and after January 1, 2018; Laws, 2018, ch. 445, § 1, eff from and after January 1, 2019; Laws, 2021, ch. 355, § 6, eff from and after July 1, 2021; Laws, 2022, ch. 439, § 6, eff from and after July 1, 2022.

Joint Legislative Committee Note — Section 1 of Chapter 406, Laws of 2015, effective from and after July 1, 2015 (approved March 23, 2015), amended this section. Section 3 of Chapter 464, Laws of 2015, effective from and after July 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of Section 3 of Chapter 464, Laws of 2015, which contains language that specifically provides that it supersedes § 63-1-6 as amended by Chapter 406, Laws of 2015.

Section 1 of Chapter 304, Laws of 2018, effective from and after July 1, 2018 (approved March 5, 2018), amended this section. Section 1 of Chapter 445, Laws of 2018, effective from and after January 1, 2019 (approved April 12, 2018). As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective.

The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 14, 2018, meeting of the Committee.

Amendment Notes — The 2021 amendment, in (b), added "or electric bicycles" at the end; in (c), substituted "subsection (j) of this section" for "paragraph (j) of this subsection" in the second sentence, and added the last sentence; in (j), added the last sentence; and added (*l*).

The 2022 amendment inserted "personal delivery devices" in (b); inserted "or personal delivery devices" in (c) and (j); inserted "(1)" in (*l*); and added (m).

Cross References — Standards for design, construction, equipment and maintenance of ambulances, see § 41-59-25.

JUDICIAL DECISIONS

1. In general.

The mere fact that on occasion the motor of a vehicle is not operating, or cannot be operated, does not alter the fact that it is a "motor vehicle" as defined in this section [Code 1942, § 8127]. Farley v. State, 251 Miss. 497, 170 So. 2d 625, 1965 Miss. LEXIS 875 (Miss. 1965).

OPINIONS OF THE ATTORNEY GENERAL

The definition of "authorized emergency vehicle" does not include the private vehicle of a volunteer fireman, and therefore, such a vehicle may not be equipped with a siren, whistle, or bell as allowed by Section 63-7-65. Baker, November 20, 1998, A.G. Op. #98-0702.

A device must be able to stand on its own without the aid of a stand or other similar mechanic prop to meet the definition of "electric personal assistive mobility device." Hedglin, Mar. 5, 2004, A.G. Op. 04-0092.

Four-wheelers, all terrain vehicles, go carts, dune buggies, golf carts, and riding lawn mowers [unless qualifying as an implement of husbandry] are "motor vehicles" and therefor require tags, inspection stickers, proper equipment and insurance. Gay, July 25, 2006, A.G. Op. 06-0305.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 1-16.

38 Am. Jur. Trials, All-Terrain Vehicle Litigation, §§ 1 et seq.

6 Am. Jur. Proof of Facts 3d, Defective Design of an All-Terrain Vehicle, §§ 1 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 1-18.

§ 63-3-105. Tractors.

(a) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(b) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(c) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

HISTORY: Codes, 1942, § 8128; Laws, 1938, ch. 200.

Cross References — Application of mandatory use of safety seat belts to farm vehicles, see § 63-2-1.

§ 63-3-107. Trailers.

(a) "Trailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(b) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

HISTORY: Codes, 1942, § 8129; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.

What constitutes "trailer" within coverage or exclusion provision of automobile liability policy. 65 A.L.R.3d 804.

§ 63-3-109. Railroads.

(a) "Railroad" means a carrier of persons or property upon cars, other than street cars, operated upon stationary rails.

(b) "Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

(c) "Street car" means a car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

HISTORY: Codes, 1942, § 8131; Laws, 1938, ch. 200.

§ 63-3-111. Tires.

(a) "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

(b) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

(c) "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

HISTORY: Codes, 1942, § 8130; Laws, 1938, ch. 200.

§ 63-3-113. Explosives and flammable liquids.

(a) "Explosive" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(b) "Flammable liquid" means any liquid which has a flash point of 70 degrees F., or less, as determined by a tagliabue or equivalent closed cup test device.

HISTORY: Codes, 1942, § 8132; Laws, 1938, ch. 200.

GOVERNMENTAL AGENCIES, OWNERS, POLICE OFFICERS AND OTHER PERSONS DEFINED

Sec.
63-3-115. Department of public safety.
63-3-117. Local authorities.
63-3-119. Police officers.
63-3-121. Individuals.

§ 63-3-115. Department of public safety.

(a) "Commissioner" means the commissioner of public safety.

(b) "Department" means the department of public safety.

HISTORY: Codes, 1942, § 8133; Laws, 1938, ch. 200.

§ 63-3-117. Local authorities.

"Local authority" means every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state.

HISTORY: Codes, 1942, § 8136; Laws, 1938, ch. 200.

§ 63-3-119. Police officers.

"Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

HISTORY: Codes, 1942, § 8135; Laws, 1938, ch. 200.

§ 63-3-121. Individuals.

(a) "Person" means every natural person, firm, copartnership, association, corporation, limited liability company or other legal business entity.

(b) "Driver" means every person who drives or is in actual physical control of a vehicle.

(c) "Owner" means a person who holds the legal title of a vehicle; in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(d) "Pedestrian" means any person afoot or a person who uses an electric personal assistive mobility device or a manual or motorized wheelchair.

(e) "Instructor" means any person who gives instruction in a course related to this Title 63, whether given in person, recorded, transmitted by electronic means, or any combination thereof.

HISTORY: Codes, 1942, § 8134; Laws, 1938, ch. 200; Laws, 2003, ch. 485, § 10; Laws, 2012, ch. 544, § 3, eff from and after passage (approved May 26, 2012).

Editor's Notes — Laws of 2012, ch. 544, § 4, effective May 26, 2012, provides:

"SECTION 4. Section 2 of this act shall take effect and be in force from and after July 1, 2012, and the remainder of this act shall take effect and be in force from and after its passage."

RESEARCH REFERENCES

ALR.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated. 35 A.L.R.4th 1117.

HIGHWAYS, DISTRICTS, SIGNALS, AND THE LIKE DEFINED

Sec.
63-3-123. Traffic.
63-3-125. Streets, roads, and highways.
63-3-127. Crosswalks.
63-3-129. Intersections.
63-3-131. Safety zones.
63-3-133. Traffic signals or devices.
63-3-135. Right-of-way.
63-3-137. Stopping, standing, and parking.
63-3-139. Districts.

§ 63-3-123. Traffic.

"Traffic" means pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highway for purposes of travel.

HISTORY: Codes, 1942, § 8143; Laws, 1938, ch. 200.

§ 63-3-125. Streets, roads, and highways.

(a) "Street or highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(b) "Laned highway" means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

(c) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

(d) "Sidewalk" means that portion of a street between curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

(e) "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

(f) "Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

HISTORY: Codes, 1942, § 8137; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

A trial court in a personal injury action did not err when it refused to instruct the jury that an automobile accident occurred within an "intersection" so that the defendant was in violation of law, pursuant to § 63-3-611(2), by attempting to pass within 100 feet of the intersection, since the conjunction where the accident took place did not constitute an "intersection" within the meaning of § 63-3-129. An "intersection" requires the conjunction of "2 highways," and one of the roads which formed the conjunction where the accident took place did not constitute a "highway" where the only evidence as to whether the road was public was the existence of a "Plant Entrance" sign and testimony regarding usage by employees of the electric plant; this evidence did not indicate that the road was public, but instead was consistent with permissive use of a private driveway. Stewart v. Davis, 571 So. 2d 926, 1990 Miss. LEXIS 697 (Miss. 1990).

§ 63-3-127. Crosswalks.

"Crosswalk" means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

HISTORY: Codes, 1942, § 8139; Laws, 1938, ch. 200.

§ 63-3-129. Intersections.

"Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

HISTORY: Codes, 1942, § 8138; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Public nature of way; driveways.

1. In general.

Where an intersection was formed by a north and south gravel road crossing a highway, running in an east and west direction, the area embraced within the lateral boundary lines of the two roadways at the point of junction constituted an intersection within the contemplation of this section [Code 1942, § 8138]. Clark v. Mask, 232 Miss. 65, 98 So. 2d 467, 1957 Miss. LEXIS 445 (Miss. 1957).

2. Public nature of way; driveways.

A trial court in a personal injury action did not err when it refused to instruct the jury that an automobile accident occurred within an "intersection" so that the defendant was in violation of law, pursuant to § 63-3-611(2), by attempting to pass within 100 feet of the intersection, since the conjunction where the accident took place did not constitute an "intersection" within the meaning of § 63-3-129. An "intersection" requires the conjunction of "2 highways," and one of the roads which formed the conjunction where the accident took place did not constitute a "highway" where the only evidence as to whether the road was public was the existence of a "Plant Entrance" sign and testimony regarding usage by employees of the electric plant; this evidence did not indicate that the road was public, but instead was consistent with permissive use of a private driveway. Stewart v. Davis, 571 So. 2d 926, 1990 Miss. LEXIS 697 (Miss. 1990).

Where a statute provided that no vehicle shall in overtaking and passing other vehicle be driven on the left side of the roadway when approaching within one hundred feet of an intersection, this statute was not applicable to overtaking automobile which attempted to pass truck as the truck driver attempted to make a left turn into a driveway leading to a store, where there was no showing that the driveway was a highway within the meaning of the statute. Frizell v. Guthrie, 222 Miss. 501, 76 So. 2d 361, 1954 Miss. LEXIS 671 (Miss. 1954).

§ 63-3-131. Safety zones.

"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

HISTORY: Codes, 1942, § 8140; Laws, 1938, ch. 200.

§ 63-3-133. Traffic signals or devices.

(a) "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(b) "Official traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(c) "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

HISTORY: Codes, 1942, § 8142; Laws, 1938, ch. 200.

Cross References — Powers and duties of the Mississippi Transportation Commission, generally, see § 65-1-8.

JUDICIAL DECISIONS

1. Jury instructions.

Trial court erred in its ruling related to Miss. Code Ann. § 63-3-313 and in refusing to give a jury instruction based on this statute, but the error was harmless because the weight of the evidence was against the driver who requested the instruction in a personal injury trial that arose out of a car accident. Etheridge v. Harold Case & Co., 960 So. 2d 474, 2006 Miss. App. LEXIS 623 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 383 (Miss. 2007).

§ 63-3-135. Right-of-way.

"Right-of-way" means the privilege of the immediate use of the highway.

HISTORY: Codes, 1942, § 8144; Laws, 1938, ch. 200; Laws, 1956, ch. 327.

§ 63-3-137. Stopping, standing, and parking.

(a) "Stop," when required, means the complete cessation from movement.

(b) "Stop, stopping or standing," when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or of a traffic control sign or signal.

(c) "Park," when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

HISTORY: Codes, 1942, § 8144; Laws, 1938, ch. 200; Laws, 1956, ch. 327.

§ 63-3-139. Districts.

(a) "Business district" means the territory contiguous to and including a highway when fifty percent (50%) or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business.

(b) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

HISTORY: Codes, 1942, § 8141; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

Where a fatal accident occurred on an interstate highway, the trial judge should have held, as a matter of law, that the scene of the accident was outside of a "business district" under § 63-3-139. Stong v. Freeman Truck Line, Inc., 456 So. 2d 698, 1984 Miss. LEXIS 1812 (Miss. 1984).

ARTICLE 5.

OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

Sec.

63-3-201. Offenses and penalties generally.
63-3-203. Failure or refusal to comply with order or direction of police officer.
63-3-205. Applicability of chapter to various public officers and employees.
63-3-207. Applicability of chapter to persons riding bicycles or animals or driving animal-drawn vehicles.
63-3-208. Use of electric personal assistive mobility devices allowed on highways and sidewalks; restrictions.
63-3-209. Uniformity of application of chapter throughout state; local traffic regulation generally.
63-3-210. Prohibition of operation of motor scooters rented in accordance with Section 63-1-6.1 on certain roads or highways under certain circumstances.
63-3-211. Enactment of traffic regulations by local authorities.
63-3-212. Localities prohibited from enacting ordinances restricting cell phone use in motor vehicles.
63-3-213. Effect of chapter upon rights of owners of certain real property.

§ 63-3-201. Offenses and penalties generally.

It is unlawful and, unless otherwise declared in this title with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden by this chapter or to fail to perform any act required in this chapter.

HISTORY: Codes, 1942, § 8146; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury instructions.

1. In general.

Driver or owner of motor vehicle must show due care and observance of the statute. Flynt v. Fondren, 122 Miss. 248, 84 So. 188, 1920 Miss. LEXIS 433 (Miss. 1920).

Automobile driver is entitled to the reasonable use and enjoyment of the streets and highways while operating his car in a careful and lawful manner, but the driver operating his car in a negligent and reckless manner in disregard of the rights and safety of others should be held strictly accountable both civilly and criminally. Ulmer v. Pistole, 115 Miss. 485, 76 So. 522, 1917 Miss. LEXIS 222 (Miss. 1917).

2. Jury instructions.

Court may instruct jury that violation of motor vehicle statute by plaintiff which is sole proximate cause of injury defeats plaintiff's recovery. White v. Weitz, 169

Miss. 102, 152 So. 484, 1934 Miss. LEXIS 9 (Miss. 1934).

OPINIONS OF THE ATTORNEY GENERAL

Although Sections 63-3-201 and 63-9-11 provide that a violation of the rules of the road is a criminal violation, a city is not prohibited from enacting additional ordinances also making disobedience or disregard of a traffic control signal a civil offense. Mitchell, Dec. 13, 2006, A.G. Op. 06-0170.

RESEARCH REFERENCES

Am. Jur.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 864.1 (Driving on wrong side of road – Failure to control vehicle – Crossing center line).

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-203. Failure or refusal to comply with order or direction of police officer.

No person shall wilfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic.

HISTORY: Codes, 1942, § 8147; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

The facts and circumstances within an officer's knowledge were sufficient to justify a reasonable belief that the plaintiff had violated this section where (1) the officer stopped the plaintiff's vehicle for speeding, (2) during the traffic stop, the officer ordered the plaintiff to return to his car and await further instruction, and (3) the plaintiff replied that he did not wish to return to his vehicle and preferred to remain on the roadside. Dallas v. City of Okolona, 1999 U.S. Dist. LEXIS 19547 (N.D. Miss. Dec. 7, 1999).

§ 63-3-205. Applicability of chapter to various public officers and employees.

The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, town, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter with respect to authorized emergency vehicles.

The provisions of this chapter shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

No driver of any authorized emergency vehicle shall assume any special privilege under this chapter except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

HISTORY: Codes, 1942, § 8148; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury questions.

1. In general.

Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-9 governs suits against governmental entities, and, therefore, Miss. Code Ann. § 63-3-205 neither controls nor affects a municipality's grant of immunity pursuant to the MTCA; the statutory language of § 63-3-205 is unambiguous and serves as general guidelines for traffic regulations and rules of the road, and the language neither instructs nor implies that § 63-3-205 should be read in conjunction with the provisions of the MTCA. Carothers v. City of Water Valley, 242 So. 3d 138, 2017 Miss. App. LEXIS 281 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 67, 2018 Miss. LEXIS 206 (Miss. 2018).

Notwithstanding Miss. Code Ann. § 63-3-303, the act giving rise to the injuries in this case was not the placement or maintenance of a traffic-control device – but rather a Department of Transportation (DOT) employee's alleged negligent operation of a pickup truck; because the employee did not fall within the exceptions to Miss. Code Ann. § 63-3-205, and his duty to adhere to applicable traffic regulations was not discretionary, the circuit court erred in finding the DOT immune under Miss. Code Ann. § 11-46-9(1)(d). Mixon v. Miss. DOT, 183 So. 3d 90, 2015 Miss. App. LEXIS 313 (Miss. Ct. App. 2015), cert. denied, 181 So. 3d 1010, 2016 Miss. LEXIS 52 (Miss. 2016).

Under this section [Code 1942, § 8148] the nighttime operation of a sprinkling truck on the left side of a highway in preparing the surface thereof for receiving surfacing materials was not a violation of statute. Webb v. Brock, 232 Miss. 154, 98 So. 2d 139, 1957 Miss. LEXIS 456 (Miss. 1957).

2. Jury questions.

In an action arising out of a collision between an automobile driven by a constable in pursuit of a reckless driver and one operated by plaintiff, where the evidence was in conflict as to such matters as to whether the siren on constable's car was sounded, speed and position of vehicles at time of accident, the issue was properly submitted to a jury. Johnson v. Richardson, 234 Miss. 849, 108 So. 2d 194, 1959 Miss. LEXIS 559 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Liability of governmental unit or its officers for injury to innocent pedestrian or occupant of parked vehicle, or for damage to such vehicle, as result of police chase. 100 A.L.R.3d 815.

Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 182, 183.

41 Am. Jur. Proof of Facts 2d 79, Negligent Vehicular Police Chase.

10 Am. Jur. Proof of Facts 3d 203, Negligent Operation of Emergency Vehicle.

§ 63-3-207. Applicability of chapter to persons riding bicycles or animals or driving animal-drawn vehicles.

Every person riding a bicycle or an animal or driving any animal drawing a vehicle upon a highway shall have all of the rights and all of the duties applicable to the driver of a vehicle under this chapter, except those provisions of this chapter which by their nature can have no application.

HISTORY: Codes, 1942, § 8149; Laws, 1938, ch. 200; Laws, 1983, ch. 350, § 2, eff from and after July 1, 1983.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury instructions.
3. Verdict.

1. In general.

Motorist overtaking and passing bicycle is required to do so at safe distance; motorist's admission that he did not entirely clear bicyclist's lane of traffic as he passed bicyclist but was only straddling center line and was unaware of location of vehicle in relation to bicycle as he passed it is sufficient basis upon which jury may find that collision between motorist's vehicle and bicycle was caused by motorist's negligence. Rideout v. Knight, 463 So. 2d 1042, 1985 Miss. LEXIS 1866 (Miss. 1985).

2. Jury instructions.

Since by this section [Code 1942, § 8149], the prohibitions of Code 1942, § 8188, apply to a person riding a bicycle, an instruction to the jury that if they believe that the plaintiff violated Code 1942, § 8188, providing that a person riding bicycle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for speed of other vehicle and traffic upon the conditions of the street, and such violation was proximate cause of accident they should find for the defendants, was proper in an action for injuries to the plaintiff bicyclist who, approaching defendant's truck from the rear, tried to pass it at intersection, was hit by the truck as it also started to turn right, and was catapulted into pathway of another car. Cochran v. Peeler, 209 Miss. 394, 47 So. 2d 806, 1950 Miss. LEXIS 404 (Miss. 1950).

3. Verdict.

In an action against an automobile driver for the alleged wrongful death of a minor who was riding a bicycle when it collided with the automobile, a jury verdict in favor of the driver foreclosed all questions of fact, resolved all conflicts in the evidence favorably to the driver, and also amounted to a factual finding by the jury that the driver of the automobile had not been negligent and had acted as a reasonably prudent person would have done under the same or similar circumstances. McCollum v. Randolph, 220 So. 2d 310, 1969 Miss. LEXIS 1452 (Miss. 1969).

RESEARCH REFERENCES

ALR.

Horseback riding or operation of horse-drawn vehicle as within drunk driving statute. 71 A.L.R.4th 1129.

Operation of bicycle as within drunk driving statutes. 73 A.L.R.4th 1139.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 225, 226.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 570.1 (complaint in collision between bicyclists

when minor bicyclist enters roadway from private driveway).

11 Am. Jur. Proof of Facts 3d 395, Negligence of Motorist in Accident Involving Bicyclist.

11 Am. Jur. Proof of Facts 3d 503, Motor Vehicle Accident – Contributory Negligence by Bicyclist.

§ 63-3-208. Use of electric personal assistive mobility devices allowed on highways and sidewalks; restrictions.

An electric personal assistive mobility device as defined in Section 63-3-103, may be operated:

(a) On a marked bicycle path;

(b) On any street or road where bicycles are permitted; or

(c) On a sidewalk, if the person operating the device yields the right-of-way to pedestrians and gives an audible signal before overtaking and passing a pedestrian.

HISTORY: Laws, 2003, ch. 485, § 3, eff from and after July 1, 2003.

§ 63-3-209. Uniformity of application of chapter throughout state; local traffic regulation generally.

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

HISTORY: Codes, 1942, § 8150; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. Applicability of state law.
2. Municipal ordinances and power.
3.-10. [Reserved for future use.]
11. Under former law.

1. Applicability of state law.

In an action arising out of an intersectional automobile collision, where it was not shown that any public authority had designated one street as a through highway and had directed the placing of stop signs on the intersecting street, state law was applicable, and the plaintiff was not under a duty to stop at the intersection even though someone had at some time placed a stop sign there, it being undisputed that the sign was down and not in place at the time of the collision. Skelton v. Turnipseed, 235 So. 2d 694, 1970 Miss. LEXIS 1458 (Miss. 1970).

2. Municipal ordinances and power.

A municipal ordinance making it unlawful for anyone to operate or ride upon any two-wheeled, self propelled vehicle upon the public streets without wearing a crash helmet, was a reasonable traffic regulation, rather than an unreasonable limitation on the personal liberty of an individual motorcyclist constituting a violation of equal protection. City of Jackson v. Lee, 252 So. 2d 897, 1971 Miss. LEXIS 1210 (Miss. 1971).

This section [Code 1942, § 8150] does not authorize a municipality to establish an automobile testing station and engage in the business of testing automobiles, and consequently a municipality had no authority to contract for the purchase of equipment for such purpose. Davenport v. Blackmur, 184 Miss. 836, 186 So. 321, 1939 Miss. LEXIS 59 (Miss. 1939).

3.-10. [Reserved for future use.]

11. Under former law.

An earlier statutory provision to the same effect as this section was held not to prohibit municipalities from requiring license for operation of motor vehicles on their streets. Wasson v. Greenville, 123 Miss. 642, 86 So. 450, 1920 Miss. LEXIS 65 (Miss. 1920).

OPINIONS OF THE ATTORNEY GENERAL

Municipalities are not authorized to restrict a particular type of vehicle, such as an all terrain vehicle, from municipal streets. Hight, December 6, 1995, A.G. Op. #95-0806.

§ 63-3-210. Prohibition of operation of motor scooters rented in accordance with Section 63-1-6.1 on certain roads or highways under certain circumstances.

(1) The Board of Trustees of State Institutions of Higher Learning may, in accordance with Section 37-105-1, enact rules and regulations that prohibit the operation of motor scooters, which are rented in accordance with Section 63-1-6.1, on certain roads or highways, if the board deems the prohibition to be in the interest of public safety.

(2) The governing board of any municipality may enact rules and regulations that prohibit the operation of motor scooters, which are rented in accordance with Section 63-1-6.1, on certain roads or highways, if the board deems the prohibition to be in the interest of public safety.

HISTORY: Laws, 2015, ch. 464, § 2, eff from and after July 1, 2015.

§ 63-3-211. Enactment of traffic regulations by local authorities.

(a) The provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from-

1. Regulating the standing or parking of vehicles;
2. Regulating traffic by means of police officers or traffic control signals;
3. Regulating or prohibiting processions or assemblages on the highways;
4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
5. Regulating the speed of vehicles in public parks;
6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections;

7. Restricting the use of highways as authorized in Chapter 5 of this title.

(b) No ordinance or regulation enacted under subsection (a)4, 5, 6, or 7 of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

HISTORY: Codes, 1942, § 8151; Laws, 1938, ch. 200.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in subsection (b) by substituting "subsection (a)4, 5, 6, or 7" for "subdivision 4, 5, 6, or 7." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Cross References — Power of governing authorities of municipalities to exercise full jurisdiction in matter of streets and sidewalks, see § 21-37-3.

Power of county board of supervisors to prescribe kind of wheels which may be used on vehicles on county public roads, see § 65-7-37.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence and witnesses.
3.-10. [Reserved for future use.]
11. Under former law.

1. In general.

It is within the power and jurisdiction of a municipality to prescribe, within reason, the manner, the place at which and the time within which an automobile may be parked upon any street in the municipality, including those streets which are part of a state highway. Ellisville v. State Highway Com., 186 Miss. 473, 191 So. 274, 1939 Miss. LEXIS 242 (Miss. 1939).

This section [Code 1942, § 8151] does not authorize a municipality to establish an automobile testing station and engage in the business of testing automobiles, and consequently a municipality had no authority to contract for the purchase of equipment for such purpose. Davenport v. Blackmur, 184 Miss. 836, 186 So. 321, 1939 Miss. LEXIS 59 (Miss. 1939).

2. Evidence and witnesses.

In a suit for personal injuries sustained by a pedestrian who was struck by an automobile, the court properly refused to permit a police officer to testify as to what was permissible to be done under a city traffic ordinance with reference to a left turn from the highway into the parking area of a restaurant. Briscoe v. Jones, 233 So. 2d 125, 1970 Miss. LEXIS 1651 (Miss. 1970).

3.-10. [Reserved for future use.]

11. Under former law.

Under an earlier statute, not wholly parallel, it was held that where a city had regulated traffic within its limits, state regulation of eight miles an hour in passing pedestrians was inapplicable. Meridian Coca-Cola Co. v. Watson, 161 Miss. 108, 134 So. 824, 1931 Miss. LEXIS 246 (Miss. 1931).

OPINIONS OF THE ATTORNEY GENERAL

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

Community college police have the powers of a constable pursuant to Miss Code Ann. § 37-29-275 and are authorized to enforce state laws within their jurisdiction, but do not have authority to enforce municipal or campus ordinances on municipal streets that run through the campus. Campus police officers may assist in the enforcement of municipal parking ordinances on municipal streets by notifying municipal authorities when violations occur. A determination of the validity of "campus tickets" may only be made by a court of competent jurisdiction. Graham, March 16, 2007, A.G. Op. #07-00138, 2007 Miss. AG LEXIS 102.

RESEARCH REFERENCES

ALR.

Public regulation and prohibition of sound amplifiers or loudspeaker broadcasts in streets and other public places. 10 A.L.R.2d 627.

Right of municipality or public to use of subsurface of street or highway for purposes other than sewers, pipes, conduits for wires, and the like. 11 A.L.R.2d 180.

§ 63-3-212. Localities prohibited from enacting ordinances restricting cell phone use in motor vehicles.

No county, municipality or other political subdivision shall enact any ordinance restricting the use of cellular phones in any motor vehicle until such time as the state may authorize a county, municipality or other political subdivision to enact such an ordinance.

HISTORY: Laws, 2002, ch. 491, § 1, eff from and after July 1, 2002.

Editor's Notes — Laws of 2002, ch. 491, was House Bill 1551, 2002 Regular Session, and originally passed the House of Representatives on January 31, 2002, and the Senate on March 7, 2002. The Governor vetoed House Bill 1551 on March 22, 2002. The veto was overridden by both the House of Representatives and the Senate on March 27, 2002.

Cross References — Power of governing authorities of municipalities to exercise full jurisdiction in matter of streets and sidewalks, see § 21-37-3.

Enactment of traffic regulations by local authorities, see § 63-3-211.

§ 63-3-213. Effect of chapter upon rights of owners of certain real property.

Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

HISTORY: Codes, 1942, § 8152; Laws, 1938, ch. 200.

ARTICLE 7.

TRAFFIC SIGNS, SIGNALS AND MARKINGS.

Sec.
63-3-301. Adoption of uniform system of traffic-control devices.

Sec.	
63-3-303.	Placing and maintaining of traffic-control devices upon state and county highways; placement of devices upon such highways by local authorities.
63-3-305.	Placing and maintaining of traffic-control devices upon highways under local jurisdiction.
63-3-307.	Reflectors on bridges in state highway system.
63-3-309.	Traffic-control signal colors and rules.
63-3-311.	Flashing signal colors and rules.
63-3-313.	Disobedience of official traffic-control devices.
63-3-315.	Obedience of official traffic-control devices by emergency vehicles.
63-3-317.	Unauthorized signs, signals, markings and devices.
63-3-319.	Interference with official traffic-control devices or railroad signs or signals.
63-3-321.	Destruction, removal, etc., of detour sign, warning sign, barricade, or fence; offenses.
63-3-323.	Destruction, removal, etc., of detour sign, warning sign, barricade, or fence; definitions.
63-3-325.	Destruction, removal, etc., of detour sign, warning sign, barricade, or fence; penalties.

§ 63-3-301. Adoption of uniform system of traffic-control devices.

The commissioner of public safety shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American Association of State Highway Officials.

HISTORY: Codes, 1942, § 8153; Laws, 1938, ch. 200.

Cross References — Duty of railroads to erect and maintain warning signboards at intersections of tracks and public roads or streets, see § 77-9-247.

JUDICIAL DECISIONS

1. Department not immune.

Mississippi Department of Transportation (MDOT) was not immune in a wrongful death claim alleging that a failure to place warning signs around a highway culvert, as required by Miss. Code Ann. § 65-21-1, resulted in an auto accident that caused the decedent's death because § 65-21-1 imposed a ministerial duty, and, as Miss. Code Ann. § 63-3-301 and Miss. Code Ann. § 63-3-303 included no language suggesting abrogation or repeal of § 65-21-1, that section-narrowly, precisely, and specifically requiring warning posts around culverts-remained in effect as an exception to the general rule of § 63-3-303 that the MDOT had discretion over such placement; Miss. Code Ann. § 65-21-1 controlled the specific issue of guide and warning posts around culverts, and § 63-3-303 controlled the discretionary placement of traffic devices that were not the subject of a specific statutory mandate. Miss. DOT v. Nosef, 110 So. 3d 317, 2013 Miss. LEXIS 143 (Miss. 2013).

RESEARCH REFERENCES

ALR.

Highways: governmental duty to provide curve warnings or markings. 57 A.L.R.4th 342.

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 294.1 (complaint, petition, or declaration against manufacturer of automatic computerized traffic-control device used to control operation of traffic signal lights, motor vehicle accident caused by defective traffic-control device).

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-303. Placing and maintaining of traffic-control devices upon state and county highways; placement of devices upon such highways by local authorities.

The commissioner of public safety and the state highway commission shall place and maintain such traffic-control devices conforming to its manual and specifications, upon all state and county highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic.

No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the commissioner of public safety and the state highway commission except by the latter's permission.

HISTORY: Codes, 1942, § 8154; Laws, 1938, ch. 200.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Definitions of traffic signals, see § 63-3-133.

Erection of highway signs or guide boards on public highways, see §§ 65-7-13 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Railroads.

1. In general.

Decisions by the Mississippi Transportation Commission regarding placement of traffic control devices were discretionary for purposes of immunity given Miss. Code Ann. § 63-3-303's assignment of authority and the economic, political, or social concerns associated with installing warning lights or signs at intersections. Smith v. Miss. Transp. Comm'n, 292 So. 3d 231, 2020 Miss. LEXIS 77 (Miss. 2020).

Placement and maintenance of traffic-control devices is discretionary, unless narrower duties encompassed in that function, such as placing and maintaining edge lines, have been rendered ministerial through statute or regulation. Miss. Transp. Comm'n v. Adams, 197 So. 3d 406, 2016 Miss. LEXIS 232 (Miss. 2016).

Trial court did not err in finding that the Mississippi Transportation Commission (MTC) and the Mississippi Department of Transportation (MDOT) were not entitled to discretionary-function immunity under the Mississippi Tort Claims Act because a widow produced evidence that MTC and MDOT breached specific ministerial duties imposed by their duly adopted regulations. Miss. Transp. Comm'n v. Adams, 197 So. 3d 406, 2016 Miss. LEXIS 232 (Miss. 2016).

Notwithstanding Miss. Code Ann. § 63-3-303, the act giving rise to the injuries in this case was not the placement or maintenance of a traffic-control device – but rather a Department of Transportation (DOT) employee's alleged negligent operation of a pickup truck; because the employee did not fall within the exceptions to Miss. Code Ann. § 63-3-205, and his duty to adhere to applicable traffic regulations was not discretionary, the circuit court erred in finding the DOT immune under Miss. Code Ann. § 11-46-9(1)(d). Mixon v. Miss. DOT, 183 So. 3d 90, 2015 Miss. App. LEXIS 313 (Miss. Ct. App. 2015), cert. denied, 181 So. 3d 1010, 2016 Miss. LEXIS 52 (Miss. 2016).

Mississippi Department of Transportation (MDOT) was not immune in a wrongful death claim alleging that a failure to place warning signs around a highway culvert, as required by Miss. Code Ann. § 65-21-1, resulted in an auto accident that caused the decedent's death because § 65-21-1 imposed a ministerial duty, and, as Miss. Code Ann. § 63-3-301 and Miss. Code Ann. § 63-3-303 included no language suggesting abrogation or repeal of § 65-21-1, that section-narrowly, precisely, and specifically requiring warning posts around culverts-remained in effect as an exception to the general rule of § 63-3-303 that the MDOT had discretion over such placement; Miss. Code Ann. § 65-21-1 controlled the specific issue of guide and warning posts around culverts, and § 63-3-303 controlled the discretionary placement of traffic devices that were not the subject of a specific statutory mandate. Miss. DOT v. Nosef, 110 So. 3d 317, 2013 Miss. LEXIS 143 (Miss. 2013).

Because Miss. Code Ann. § 65-1-65 and Miss. Code Ann. § 63-3-303 do not impose any specific directives as to the time, manner, and conditions for carrying out the Mississippi Transportation Commission's duty in maintaining highways or posting traffic-control or warning devices, those duties are not ministerial in nature but are discretionary. Further, the duty to maintain highways and place warning signs clearly requires the Mississippi Transportation Commission to consider the policy considerations of doing so. Knight v. Miss. Transp. Comm'n, 10 So. 3d 962, 2009 Miss. App. LEXIS 217 (Miss. Ct. App. 2009), overruled, Little v. Miss. DOT, 129 So. 3d 132, 2013 Miss. LEXIS 551 (Miss. 2013).

Summary judgment was properly awarded to the Mississippi Transportation Commission (MTC) in appellants' action for injuries and death resulting from a two-vehicle collision because the MTC's duty to place warning signs was discretionary under Miss. Code Ann. § 63-3-303; hence, the MTC's failure to place warning signs was shielded from liability according to Miss. Code Ann. § 11-46-9(1)(d). Willingham v. Miss. Transp. Comm'n, 944 So. 2d 949, 2006 Miss. App. LEXIS 916 (Miss. Ct. App. 2006).

Clear meaning of Miss. Code Ann. § 63-3-303 is to create a statutory duty that must be carried out in a discretionary matter. Willingham v. Miss. Transp. Comm'n, 944 So. 2d 949, 2006 Miss. App. LEXIS 916 (Miss. Ct. App. 2006).

Under this section, the placement of traffic control signs or devices is dependent upon the discretion of the responsible entity. Jones v. Mississippi DOT, 744 So. 2d 256, 1999 Miss. LEXIS 201 (Miss. 1999).

2. Railroads.

Miss. Code Ann. § 63-3-303 (Rev. 2013) allowed the Mississippi Department of Transportation, in its discretion, to determine the appropriate type, number, and location of traffic-control devices, making it immune from liability for a claim of failure to erect or maintain appropriate and reasonable signs, signals, warning devices, illumination devices, or guardrails and/or barriers despite actual or constructive notice of the absence and/or inadequate condition of the existing devices under Miss. Code Ann. § 11-46-9(1)(d) (Rev. 2012). Ala. Great S. R.R. Co. v. Jobes, 156 So. 3d 871, 2015 Miss. LEXIS 37 (Miss. 2015).

In an action arising from a collision between a train and a car that was allegedly caused, in part, by a lack of active protection at a crossing and vegetation that obstructed the view of the operator of the car, the court rejected the railroad's contention that §§ 63-3-303 and 63-3-305 removed any and all responsibility from its shoulders and transferred the duty to the Mississippi Department of Transportation, as §§ 77-9-245, 77-9-247, 77-9-248, 77-9-251, and 77-9-253 all clearly refer to duties of the railroad in the interest of public safety. Kansas City S. Ry. Co. v. Johnson, 798 So. 2d 374, 2001 Miss. LEXIS 26 (Miss.), cert. denied, 534 U.S. 816, 122 S. Ct. 43, 151 L. Ed. 2d 15, 2001 U.S. LEXIS 5524 (U.S. 2001).

OPINIONS OF THE ATTORNEY GENERAL

At the intersection of a county road and a state highway, under this section, the state is responsible for erecting and maintaining traffic control devices unless the county receives state permission to do the same. Austin, July 26, 1996, A.G. Op. #96-0453.

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. Proof of Facts 2d 683, Defective Design or Setting of Traffic Control Signal.

§ 63-3-305. Placing and maintaining of traffic-control devices upon highways under local jurisdiction.

Local authorities in their respective jurisdictions shall place and maintain such traffic control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or provisions of local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

Local authorities in exercising those functions referred to in the preceding paragraph shall be subject to the direction and control of the state highway commission.

HISTORY: Codes, 1942, § 8155; Laws, 1938, ch. 200.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Burden of proof.
3. Jury instructions.
4. Railroads.
5. Liability under statute.

1. In general.

Under this section, the placement of traffic control signs or devices is dependent upon the discretion of the responsible entity. Jones v. Mississippi DOT, 744 So. 2d 256, 1999 Miss. LEXIS 201 (Miss. 1999).

In an action to recover for injuries sustained by the plaintiff when his vehicle collided with a gravel pile built on a road as a barrier to an out-of-service bridge on the road, it was error for the court to prevent the plaintiff from introducing the Manual on Uniform Traffic Control Devices as proof of the applicable standard of care concerning the placement of warning signs and barricades on public roads where the defendant county did not dispute that such manual is the system approved by the American Association of State Highway Officials. Jones v. Panola County, 725 So. 2d 774, 1998 Miss. LEXIS 244 (Miss. 1998).

In cases involving injuries arising out of vehicular traffic on municipal streets or county roads where special municipal or county speed restrictions have been placed in effect, the party expecting to rely upon a violation of such restrictions should plead the existence of the special speed limit established by local authority, and its violation. Niles v. Sanders, 218 So. 2d 428, 1969 Miss. LEXIS 1599 (Miss. 1969).

2. Burden of proof.

If the existence of a special county or municipal speed restriction is alleged and denied, or if its legality is put in issue by a responsive pleading, proof should then be required, the burden resting upon the party having the affirmative, as in other cases of disputed fact; but where the existence of the speed zone and rate of speed are properly alleged and not denied, proof that speed signs were in fact posted is sufficient to create a presumption that they reflect appropriate action by competent authority in restricting speeds. Niles v. Sanders, 218 So. 2d 428, 1969 Miss. LEXIS 1599 (Miss. 1969).

3. Jury instructions.

Trial court did not err in refusing to instruct the jury that a driver was required to reduce his speed as he approached a special hazard as required by Miss. Code Ann. § &nbsp;63-3-505, because the instructions as a whole adequately instructed the jury as to the duties of the driver and § 63-3-505 did not tie into the facts of the case as the driver struck the individual when passing the individual and the individual began to make a left-hand turn. Good v. Indreland, 910 So. 2d 688, 2005 Miss. App. LEXIS 176 (Miss. Ct. App. 2005).

4. Railroads.

In an action arising from a collision between a train and a car that was allegedly caused, in part, by a lack of active protection at a crossing and vegetation that obstructed the view of the operator of the car, the court rejected the railroad's contention that §§ 63-3-303 and 63-3-305 removed any and all responsibility from its shoulders and transferred the duty to the Mississippi Department of Transportation, as §§ 77-9-245, 77-9-247, 77-9-248, 77-9-251, and 77-9-253 all clearly refer to duties of the railroad in the interest of public safety. Kansas City S. Ry. Co. v. Johnson, 798 So. 2d 374, 2001 Miss. LEXIS 26 (Miss.), cert. denied, 534 U.S. 816, 122 S. Ct. 43, 151 L. Ed. 2d 15, 2001 U.S. LEXIS 5524 (U.S. 2001).

5. Liability under statute.

Circuit court erred in granting the motions filed by a county board of supervisors and a city to dismiss a driver's personal injury action based on discretionary-function immunity because the driver alleged a simple act of negligence, where the allegedly tortious act was a construction crew's alleged failure to barricade or warn against the significant drop-off in the road—a condition it created—and not the result of statutory noncompliance or the result of a policy decision. Wilcher v. Lincoln Cty. Bd. of Supervisors, 243 So. 3d 177, 2018 Miss. LEXIS 229 (Miss. 2018).

While Miss. Code Ann. § 63-3-305 contains the term "shall", it also contains the phrase, "as they may deem necessary", which, as state legal precedent suggests, means that a local authority's placement of traffic control devices is a discretionary duty. Because the placement of traffic control devices, including road construction signs, is a discretionary duty, Miss. Code Ann. § 11-46-9(1)(d) applies, and a county cannot be liable with regard to the placement of such signs, regardless of whether or not it abused its discretion in doing so. Dozier v. Hinds County, 379 F. Supp. 2d 834, 2005 U.S. Dist. LEXIS 15666 (S.D. Miss. 2005).

Mississippi county was fraudulently joined in a suit, arising out of a fatal car accident because: (1) the county did not have any legal responsibility with regard to the posting of a stop sign at the intersection where the accident occurred, (2) Miss. Code Ann. § 63-3-305 granted discretionary authority to the county to place and maintain traffic control devices upon highways within the county, (3) under Miss. Code Ann. § 11-46-9(1)(d), the county could not be held liable for its exercise of discretionary power under Miss. Code Ann. § 63-3-305, even if an abuse of discretion was shown, and (4) although there was precedent under Mississippi law to hold municipalities liable, either under Miss. Code Ann. § 11-46-9(1)(b) or (1)(w), for failing to warn about known dangerous conditions on roads, no reasonable factfinder would find that the motorist who caused the accident was not adequately warned about the approaching intersection. Dozier v. Hinds County, 379 F. Supp. 2d 834, 2005 U.S. Dist. LEXIS 15666 (S.D. Miss. 2005).

OPINIONS OF THE ATTORNEY GENERAL

Counties are responsible for the installation and maintenance of necessary warning signs and pavement markings at rail crossings on roads under their jurisdiction subject to approval by the State Highway Commission. Fortier, Mar. 29, 2002, A.G. Op. #02-0109.

The mandate to maintain pavement markings and advance warning signs at public railroad crossing intersections on roads under local jurisdiction carries with it the responsibility to pay for this continued maintenance. Brown, Apr. 4, 2003, A.G. Op. #02-0769.

A local jurisdiction, in the exercise of its sound discretion, is responsible for paying for the materials and the installation of pavement markings and advance warning signs at public railroad crossing intersections on roads under local jurisdiction; both the materials and the installation of same are subject to approval by the Department of Transportation. Brown, Apr. 4, 2003, A.G. Op. #02-0769.

If the public roadway/railroad crossing involves roads which are under different jurisdictions, the funding responsibilities should be allocated proportionately among the respective jurisdictions. Brown, Apr. 4, 2003, A.G. Op. #02-0769.

RESEARCH REFERENCES

ALR.

Liability of governmental unit for collision with safety and traffic-control devices in traveled way. 7 A.L.R.2d 226.

Liability of municipality for failure to erect traffic warnings against entering or using street partially barred or obstructed by construction or improvement work. 52 A.L.R.2d 689.

Highways: governmental duty to provide curve warnings or markings. 57 A.L.R.4th 342.

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 294.1 (complaint, petition, or declaration against manufacturer of automatic computerized traffic-

control device used to control operation of traffic signal lights, motor vehicle accident caused by defective traffic-control device).

6 Am. Jur. Proof of Facts 2d 683, Defective Design or Setting of Traffic Control Signal.

§ 63-3-307. Reflectors on bridges in state highway system.

The state highway commission is hereby authorized, in its discretion, to place amber reflectors on each end and on both sides of all bridges on all roads on the state highway system, which will permit a person to see such reflectors so that he might know that he is about to approach a bridge.

HISTORY: Codes, 1942, § 8154; Laws, 1938, ch. 200.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

OPINIONS OF THE ATTORNEY GENERAL

A driver turning left at a T-intersection onto a one-way street must signal his intention to turn for a reasonable distance. Phillips, Apr. 8, 2005, A.G. Op. 05-0077.

Where a solid white line marks a turn lane, a driver in such lane must signal his intention to turn for a reasonable distance as determined by all the facts and circumstances then present. Phillips, Apr. 8, 2005, A.G. Op. 05-0077.

Where a driver is in a turn lane controlled by a green arrow or is approaching a T-intersection from a two-way street that intersects with a one-way street, where there is no option other than turning left, the driver must signal his intention to turn for a reasonable distance. Phillips, Apr. 8, 2005, A.G. Op. 05-0077.

A driver is allowed to make a lane change if the movement can be made with reasonable safety and the driver gives a signal if any other vehicle may be affected by such movement. Phillips, Apr. 8, 2005, A.G. Op. 05-0077.

§ 63-3-309. Traffic-control signal colors and rules.

Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one (1) at a time, only the following colors shall be used and said terms and lights shall indicate as follows:

(1) Green alone or "Go."

(a) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. However, vehicular traffic shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) Yellow alone or "Caution" when shown following the green or "Go" signal.

(a) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety a vehicle may be driven cautiously through the intersection.

(b) Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) Red alone or "Stop."

(a) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at an intersection or at such other point as may be indicated by a clearly visible line and shall remain standing until green or "Go" is shown alone, except as provided in subparagraphs (b) and (c) of this paragraph (3);

(b) Vehicular traffic facing a steady red signal may cautiously enter the intersection to turn right after stopping as required by subparagraph (a) of this paragraph (3), unless a sign stating "No Turn On Red" is in place prohibiting such a turn. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other vehicular traffic lawfully using the intersection.

(c) Vehicular traffic facing a steady red signal at the intersection of two (2) one-way streets may cautiously enter the intersection to turn left in the direction designated for one-way traffic, after stopping as required by paragraph (3)(a), unless a sign stating "No Turn On Red" is in place prohibiting such a turn. Such vehicular traffic shall yield the right-of-way to pedestrians within an adjacent crosswalk and to other vehicular traffic lawfully using the intersection.

(d) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(4) Red with green arrow.

(a) Vehicular traffic facing such signal may cautiously enter the intersection only to make movement indicated by such arrow but shall not interfere with other traffic or endanger pedestrians lawfully within a crosswalk.

(b) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

HISTORY: Codes, 1942, § 8157; Laws, 1938, ch. 200; Laws, 1974, ch. 399; Laws, 1976, ch. 308; Laws, 1987, ch. 412, eff from and after July 1, 1987.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal statutory references in this section by making the following changes: in subsection (3)(a), by inserting "subparagraphs" preceding "(b) and (c) of this paragraph (3)"; and in subsection (3)(b), by substituting "subparagraph (a) of this paragraph (3)" for "paragraph (3)(a)." The Joint Committee ratified the correction at its August 10, 2022, meeting.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury instructions.
3. Jury issues.

1. In general.

One who had turned left at an intersection while the traffic signal was red, pursuant to a green arrow signal, and who had traversed almost the entire distance of the intersection before another car, when the signal turned from red to green, had entered the intersection, is not required to yield the right of way. Jackson Yellow Cab Co. v. Alexander, 246 Miss. 268, 148 So. 2d 674, 1963 Miss. LEXIS 441 (Miss. 1963).

2. Jury instructions.

A party is not entitled to an instruction that one should yield to the car first entering an intersection where the statute requires stopping before entering the intersection in response to a red signal light, and Code 1942, § 8195 merely prescribes the general rule as to an ordinary intersection and is inapplicable to one with traffic lights and signals. Gates v. Green, 214 So. 2d 828, 1968 Miss. LEXIS 1337 (Miss. 1968).

3. Jury issues.

In tort action stemming from motor vehicle accident where both automobiles collided while going through yellow traffic signal following green signal, question whether party accused of negligence had right to and did cautiously proceed through yellow signal under circumstances at issue was question to be decided by jury, and directed verdict favoring defendant was inappropriate. Collins v. Ringwald, 502 So. 2d 677, 1987 Miss. LEXIS 2319 (Miss. 1987).

RESEARCH REFERENCES

ALR.

Construction and Application of Statutory Provision Requiring Motorists to Yield Right-of-Way to Emergency Vehicle. 87 A.L.R.5th 1.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 238.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 794-801.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 891-893, 1341-1524, 1531-2060.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 161-163.

20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 294.1 (complaint, petition, or declaration against manufacturer of automatic computerized traffic-control device used to control operation of traffic signal lights, motor vehicle accident caused by defective traffic-control device).

CJS.

60A C.J.S., Motor Vehicles §§ 835-841.

61A C.J.S., Motor Vehicles § 1756.

§ 63-3-311. Flashing signal colors and rules.

Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:

1. **Flashing red (stop signal).** When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. **Flashing yellow (caution signal).** When a yellow lens is illumi-

nated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

HISTORY: Codes, 1942, § 8158; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury instructions.

1. In general.

Where a motorist approaching an intersection with the signal lights flashing red in her direction, failed to stop before entering therein, the court properly submitted to the jury the issue as to whether such negligence was a sole cause of the collision. Bates v. Walker, 232 Miss. 804, 100 So. 2d 611, 1958 Miss. LEXIS 333 (Miss. 1958).

2. Jury instructions.

In an action for damages arising out of a collision between plaintiff's motorcycle and defendant's automobile in an intersection with a flashing red light and stop sign facing plaintiff and a flashing yellow light and warning sign facing defendant, the trial court did not err in refusing to grant plaintiff's standard of care instruction which included the language, "the defendant had no lawful right to go forward. . . under the assumption that it would be open and clear," where a granted instruction detailed the crucial point that the yellow light facing defendant demanded caution, and that a finding of negligence would flow from her failure to yield the right-of-way to plaintiff if, as he claimed, he had lawfully entered the intersection and stalled unexpectedly. The trial court also properly refused to grant an instruction which stated in part, "the driver of a motor vehicle has a lawful duty to decrease his speed upon approaching an intersection," since § 63-3-311(2) merely states that a driver "may proceed. . . only with caution" and caution is a relative concept not necessarily entailing decrease in speed since the current speed may already be a cautious speed. Allen v. Blanks, 384 So. 2d 63, 1980 Miss. LEXIS 2000 (Miss. 1980).

Where a motorist had approached an intersection with the signal light flashing red in her direction, and failed to stop before entering the intersection, she was not entitled to an instruction under Code 1942, § 8195, providing that the driver of a vehicle approaching an intersection shall yield the right of way to vehicle which has entered the intersection from a different highway. Bates v. Walker, 232 Miss. 804, 100 So. 2d 611, 1958 Miss. LEXIS 333 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 238.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 800, 801.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 165.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 894, 1341-1524, 1531-2060.

20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 294.1 (complaint, petition, or declaration against manufacturer of automatic computerized traffic-control device used to control operation of traffic signal lights, motor vehicle accident caused by defective traffic-control device).

CJS.

61A C.J.S., Motor Vehicles § 1756.

§ 63-3-313. Disobedience of official traffic-control devices.

No driver of a vehicle shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a police officer.

HISTORY: Codes, 1942, § 8156; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

Although there was no violation of § 63-3-516 when the defendant drove 67 miles per hour in a construction zone which was posted at 60 miles per hour because it was nighttime and no workers were present, there was a violation of § 63-3-313 as he did not obey an official traffic-control device. Harrison v. State, 2000 Miss. App. LEXIS 44 (Miss. Ct. App. Feb. 8, 2000), aff'd, 800 So. 2d 1134, 2001 Miss. LEXIS 223 (Miss. 2001).

Trial court erred in its ruling related to Miss. Code Ann. § 63-3-313 and in refusing to give a jury instruction based on this statute, but the error was harmless because the weight of the evidence was against the driver who requested the instruction in a personal injury trial that arose out of a car accident. Etheridge v. Harold Case & Co., 960 So. 2d 474, 2006 Miss. App. LEXIS 623 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 383 (Miss. 2007).

RESEARCH REFERENCES

ALR.

Liability of governmental unit for collision with safety and traffic-control devices in traveled way. 7 A.L.R.2d 226.

Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal. 74 A.L.R.2d 242.

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 794 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 171.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 1342-1524, 1531-2060.

20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 294.1 (complaint, petition, or declaration against manufacturer of automatic computerized traffic-control device used to control operation of traffic signal lights, motor vehicle accident caused by defective traffic-control device).

6 Am. Jur. Proof of Facts 2d 683, Defective Design or Setting of Traffic Control Signal.

CJS.

60A C.J.S., Motor Vehicles § 838.

§ 63-3-315. Obedience of official traffic-control devices by emergency vehicles.

The driver of any authorized emergency vehicle when responding to an emergency call upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety but may proceed cautiously past such red or stop sign or signal. At other times drivers of authorized emergency vehicles shall stop in obedience to a stop sign or signal.

HISTORY: Codes, 1942, § 8148; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

Deputy, who stopped at an intersection and, with his blue lights and sirens activated, slowly proceeded across in a stop-and-start fashion, exercised sufficient safety measures to prompt other drivers near the intersection to yield the right-of-way, including the driver traveling in the lane ahead of plaintiffs. Thus, viewing the evidence in the light most favorable to plaintiffs, the deputy's conduct did not demonstrate a conscious indifference to consequences, nor did it rise to the level of reckless disregard for the safety and well-being of persons not engaged in criminal activity, so as subject the county to liability under Miss. Code Ann. § 11-46-9(1)(c). Rayner v. Pennington, 25 So. 3d 305, 2010 Miss. LEXIS 12 (Miss. 2010).

Evidence showed the officer was traveling approximately 37 miles per hour with lights and sirens activated, there was nothing obstructing the view of either the person later injured or the officer, and the greater weight of evidence also proved that the person's left turn signal was not activated. In addition, the officer had consciously stopped at the previous two intersections because the officer considered both of those to be blind intersections, and therefore, the officer's behavior supported the finding that the officer appreciated the risk involved in approaching the intersection and did not act with reckless disregard. Davis v. Latch, 873 So. 2d 1059, 2004 Miss. App. LEXIS 445 (Miss. Ct. App. 2004).

In a negligence action arising out of an automobile accident, a driver who had a green light was not negligent as a matter of law in failing to yield the right-of-way to an emergency police vehicle pursuant to § 63-3-809 because the driver of an emergency vehicle has a duty under § 63-3-315 to slow down as necessary for safety upon approaching a red traffic light controlling an intersection. Andrews v. Jitney Jungle Stores, Inc., 537 So. 2d 447, 1989 Miss. LEXIS 9 (Miss. 1989).

RESEARCH REFERENCES

ALR.

Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

Am. Jur.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 591-601, 1341-1524, 1531-2060.

10 Am. Jur. Proof of Facts 3d 203, Negligent Operation of Emergency Vehicle.

§ 63-3-317. Unauthorized signs, signals, markings and devices.

(1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal. No person shall place or maintain and no public authority shall permit upon any highway any traffic sign or signal bearing thereon any commercial advertising, or any billboard or advertising sign of any kind or description, except that motorist services business signs and supports which are authorized by the state highway commission pursuant to Section 65-1-8 may be placed and maintained within state highway rights-of-way. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information

and of a type that cannot be mistaken for official signs provided that said signs are not erected closer than fifty (50) feet to the center line of state highways.

(2) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed after ten (10) days' notice to the owner thereof by registered letter or otherwise.

HISTORY: Codes, 1942, § 8159; Laws, 1938, ch. 200; Laws, 1983, ch. 395, § 2, eff from and after July 1, 1983.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

RESEARCH REFERENCES

ALR.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. 80 A.L.R.3d 687.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 A.L.R.3d 740.

Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 A.L.R.3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 A.L.R.3d 564.

§ 63-3-319. Interference with official traffic-control devices or railroad signs or signals.

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal, or any inscription, shield, or insignia thereon, or any other part thereof.

HISTORY: Codes, 1942, § 8160; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.

Liability of private person negligently causing malfunctioning, removal, or extinguishment of traffic signal or sign for subsequent motor vehicle accident. 64 A.L.R.2d 1364.

Automobiles: sudden emergency as exception to rule requiring motorist to maintain ability to stop within assured clear distance ahead. 75 A.L.R.3d 327.

§ 63-3-321. Destruction, removal, etc., of detour sign, warning sign, barricade, or fence; offenses.

Any person who wilfully destroys, knocks down, removes, defaces, or alters any letters or figures on a detour or warning sign set upon a highway or road of this state, or who wilfully knocks down, removes, rearranges, destroys, defaces, or alters any letter or figures on a barricade or fence erected on any highway or road of this state, or who drives around or through any barricade or fence on any officially closed highway or road of this state, or who drives around such detour sign or barricade or fence, or who wilfully ignores or disregards a warning sign before such road has been officially opened to the public traffic by the Mississippi State Highway Department, or in appropriate cases by the county or municipal officer responsible for constructing or maintaining such roads, shall be guilty of a misdemeanor. This shall have no application to peace officers in the performance of their duties, nor to employees of the Mississippi State Highway Department, nor to employees of the contractor, nor to employees of the federal authorities when engaged in inspection of surveys, repairs, maintenance, or construction on or alongside such highways, within the right-of-way, nor to individuals domiciled or making their livelihood within the affected areas, nor to any person or group of persons who shall be authorized by the highway director, or appropriate county or municipal officer.

HISTORY: Codes, 1942, § 8160.6; Laws, 1972, ch. 397, § 2, eff from and after passage (approved April 27, 1972).

Editor's Notes — Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation.

RESEARCH REFERENCES

ALR.

Duty of highway construction contract or to provide temporary way or detour around obstruction. 29 A.L.R.2d 876.

§ 63-3-323. Destruction, removal, etc., of detour sign, warning sign, barricade, or fence; definitions.

The following words, terms and phrases, when used in Section 63-3-321 shall have the meaning ascribed to them herein:

(a) "Detour sign" means any sign placed across or on a public road of the state, by the state, the county or municipal authorities or by their contractors, indicating that such road is closed or partially closed, which sign also indicates the direction of an alternate route to be followed to give access to certain points.

(b) "Warning sign" means a sign indicating construction work in area.

(c) "Barricade" means a barrier for obstructing the passage of motor vehicle traffic.

(d) "Fence" means a barrier to prevent the intrusion of motor vehicle traffic.

(e) "Officially closed" means a highway or road that has been officially closed by a governmental unit, the Mississippi State Highway Department, a city or a county.

(f) "Officially opened" shall mean any highway that does not have signs or barriers stating that it is closed.

HISTORY: Codes, 1942, § 8160:5: Laws, 1972, ch. 397, § 1, eff from and after passage (approved April 27, 1972).

Editor's Notes — Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation.

§ 63-3-325. Destruction, removal, etc., of detour sign, warning sign, barricade, or fence; penalties.

Every person convicted of a violation of Section 63-3-321 shall be punished by a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment. The conviction of a violation of Section 63-3-321 shall not be competent evidence in any civil action.

HISTORY: Codes, 1942, § 8160.7: Laws, 1972, ch. 397, § 3, eff from and after passage (approved April 27, 1972).

Cross References — Payment of traffic fines by personal check, see § 63-9-12.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

ARTICLE 9.

ACCIDENTS AND REPORTS.

Sec.
63-3-401. Duties of driver involved in accident resulting in personal injury or death; offenses and penalties.
63-3-403. Duties of driver involved in accident resulting in property damage to attended vehicle; offenses and penalties.
63-3-405. Duty of driver involved in accident resulting in injury or death or property damage to give information and render aid; liability for rendering assistance.
63-3-407. Duties of driver involved in accident involving unattended vehicle.
63-3-409. Duties of driver striking fixtures upon or adjacent to highway.
63-3-411. Duties of drivers involved in accidents involving injury or death or property damage of $500 or more to report accidents; supplemental reports; investigations and reports by law enforcement officers.
63-3-413. Reporting of accident by occupant of vehicle when driver incapable of reporting.
63-3-415. Accident report forms.
63-3-417. Disclosure of information in accident reports; fraudulently obtaining information contained in report; penalties.
63-3-419. Reporting by hospitals and medical examiners of deaths from motor vehicle accidents.
63-3-421. Tabulation and analysis of accident reports.

Sec.	
63-3-423.	Requirement of accident reports by municipal corporations; confidentiality of reports.
63-3-425.	Duty of driver involved in accident without serious injury or death to move vehicle to designated accident investigation site if possible; violation.

§ 63-3-401. Duties of driver involved in accident resulting in personal injury or death; offenses and penalties.

(1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 63-3-405.

(2) Every stop under the provisions of subsection (1) of this section shall be made without obstructing traffic or endangering the life of any person more than is necessary.

(3) Except as provided in subsection (4) of this section, if any driver of a vehicle involved in an accident that results in injury to any person willfully fails to stop or to comply with the requirements of subsection (1) of this section, then such person, upon conviction, shall be punished by imprisonment for not less than thirty (30) days nor more than one (1) year, or by fine of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

(4) If any driver of a vehicle involved in an accident that results in the death of another or the mutilation, disfigurement, permanent disability or the destruction of the tongue, eye, lip, nose or any other limb, organ or member of another willfully fails to stop or to comply with the requirements under the provisions of subsection (1) of this section, then such person, upon conviction, shall be guilty of a felony and shall be punished by imprisonment for not less than five (5) nor more than twenty (20) years, or by fine of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

(5) The commissioner shall revoke the driver's license of any person convicted under this section.

HISTORY: Codes, 1942, § 8161; Laws, 1938, ch. 200; Laws, 1996, ch. 461, § 1; Laws, 2010, ch. 374, § 1, eff from and after July 1, 2010.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Indictment — held sufficient.
2. Double jeopardy.
3. Illustrative cases.

1. Indictment — held sufficient.

That an indictment charging appellant

with aggravated assault and leaving the scene of the accident did not state the location of the incident and whether the victims were pedestrians did not entitle him to post-conviction collateral relief, because he demonstrated no uncertainty as to these facts during his testimony at his sentencing hearing, and he waived any non-jurisdictional defects in the indictment when he pled guilty. Fox v. State, 129 So. 3d 208, 2013 Miss. App. LEXIS 223 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 78 (Miss. 2014).

Indictment charging appellant with leaving the scene of the accident was sufficient and not vague; as it included the phrase “wilfully, unlawfully, and feloniously,” it was apparent that he was charged under the felony, not the misdemeanor, portion of Miss. Code Ann. § 63-3-401. Fox v. State, 129 So. 3d 208, 2013 Miss. App. LEXIS 223 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 78 (Miss. 2014).

Denial of petitioner’s motion for post-conviction relief was proper where his indictment was not defective because the indictment clearly charged an offense cognizable under the laws of Mississippi; it tracked the language in Miss. Code Ann. § 63-3-401 and was therefore sufficient. Holifield v. State, 852 So. 2d 653, 2003 Miss. App. LEXIS 67 (Miss. Ct. App.), cert. denied, 847 So. 2d 866, 2003 Miss. LEXIS 902 (Miss. 2003), cert. denied, 540 U.S. 957, 124 S. Ct. 409, 157 L. Ed. 2d 294, 2003 U.S. LEXIS 7587 (U.S. 2003).

2. Double jeopardy.

Double Jeopardy Clause was not violated because the drunk-driving statute established separate crimes for each of the victims identified and the offense of leaving the scene of an accident contained different elements from the offenses established by the drunk-driving statute. Buckner v. State, 135 So. 3d 915, 2013 Miss. App. LEXIS 682 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 201 (Miss. 2014).

3. Illustrative cases.

Truck driver was not at fault in an auto accident when a motorist who was passing the truck struck an oncoming vehicle on a highway. Furthermore, the truck driver’s failure to stop after the accident in no way proximately caused or contributed to the accident or was evidence of the truck driver’s guilt. Owens v. Brooks, 321 So. 3d 1202, 2021 Miss. App. LEXIS 24 (Miss. Ct. App.), cert. denied, 322 So. 3d 1290, 2021 Miss. LEXIS 202 (Miss. 2021).

Trial court did not abuse its discretion in admitting evidence of defendant’s prior driving under the influence conviction; the trial court found the evidence was clearly probative as to defendant’s motive for leaving the scene of the accident, and any potential prejudice was outweighed by its enormous amount of probative value. Manyfield v. State, 296 So. 3d 240, 2020 Miss. App. LEXIS 319 (Miss. Ct. App. 2020).

Jury could have found that defendant was the driver of the truck when it caused the accident that killed the victim and that defendant left the scene, and thus the evidence supported his convictions; his parents loaned him the truck, his books were found inside, before the accident he was seen at a bar, he had a motive to leave the scene given his recent conviction of driving under the influence and his license suspension, and his DNA also matched the DNA on the truck’s driver’s side airbag. Manyfield v. State, 296 So. 3d 240, 2020 Miss. App. LEXIS 319 (Miss. Ct. App. 2020).

Evidence supported defendant’s conviction for attempting to leave the scene of an accident that resulted in an injury because defendant tried to open the door to a car and get in the car after wrecking a car which defendant had taken in a carjacking. The jury was free to infer that defendant did so with the intent to steal the car and then flee the scene of an auto accident in which another motorist was severely injured, but was frustrated by a locked car door or defendant’s own physical condition, not a voluntary abandonment of purpose. Moffett v. State, 287 So. 3d 975, 2019 Miss. App. LEXIS 549 (Miss. Ct. App. 2019).

Defendant, an off-duty police officer, was properly convicted of felony leaving the scene of an accident because, while it was later determined that he was not at fault for a fatal accident with a pedestrian, returned to the scene, and admitted to hitting the pedestrian, more than one witness testified to seeing him leave the scene of the accident for as long as 15 minutes. Snyder v. State, 204 So. 3d 859, 2016 Miss. App. LEXIS 261 (Miss. Ct. App.), cert. denied, 205 So. 3d 1085, 2016 Miss. LEXIS 499 (Miss. 2016).

Evidence was sufficient to convict defendant of the felony of leaving the scene of an accident that resulted in injury or death because, although defendant stated that he assumed that he possibly hit a bird, the jury heard testimony from three witnesses that the victim's bicycle was equipped with a blinking strobe light and an orange medical flag, which sat atop a five-foot-high plastic pole; defendant's collision with the victim not only damaged the right fender of defendant's truck but also broke his passenger-side mirror and tore off the accompanying mirror cover; and defendant called his girlfriend and asked her to call the hospital to see whether any reports had come in regarding someone struck by a vehicle. Brown v. State, 169 So. 3d 897, 2014 Miss. App. LEXIS 85 (Miss. Ct. App. 2014).

RESEARCH REFERENCES

ALR.

Failure to comply with statute requiring one involved in automobile accident to stop or report as affecting question as to suspension or tolling statute of limitations. 10 A.L.R.2d 564.

Criminal responsibility of one other than driver at time of accident, under "hit-and-run" statute. 62 A.L.R.2d 1130.

Applicability of criminal "hit-and-run" statute to accidents occurring on private property. 77 A.L.R.2d 1171.

Instructions on sudden emergency in motor vehicle cases. 80 A.L.R.2d 5.

Violation of statute requiring one involved in accident to stop and render aid as affecting civil liability. 80 A.L.R.2d 299.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid. 82 A.L.R.4th 232.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 324, 325 et seq.

27 Am. Jur. Proof of Facts 287, Identification of Hit-and-Run Vehicle and Driver.

CJS.

60 C.J.S., Motor Vehicles § 46.

61A C.J.S., Motor Vehicles §§ 1692 et seq.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-403. Duties of driver involved in accident resulting in property damage to attended vehicle; offenses and penalties.

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 63-3-405. Every such stop shall be made without obstructing traffic more than is necessary.

Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.

HISTORY: Codes, 1942, § 8162; Laws, 1938, ch. 200.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid. 82 A.L.R.4th 232.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 324, 325 et seq.

27 Am. Jur. Proof of Facts 287, Identification of Hit-and-Run Vehicle and Driver.

CJS.

60 C.J.S., Motor Vehicles § 46.

61A C.J.S., Motor Vehicles §§ 1692 et seq.

Law Reviews.

1979 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 887, December, 1979.

§ 63-3-405. Duty of driver involved in accident resulting in injury or death or property damage to give information and render aid; liability for rendering assistance.

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and shall, upon request and if available, exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with. Said driver shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. No such driver who, in good faith and in the exercise of reasonable care, renders emergency care to any injured person at the scene of an accident or in transporting said injured person to a point where medical assistance can be reasonably expected, shall be liable for any civil damages to said injured person as a result of any acts committed in good faith and in the exercise of reasonable care or omission in good faith and in the exercise of reasonable care by such driver in rendering the emergency care to said injured person.

HISTORY: Codes, 1942, § 8163; Laws, 1938, ch. 200; Laws, 1979, ch. 376, § 2, eff from and after July 1, 1979.

Cross References — "Good Samaritan" statute, see § 73-25-37.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Application.
3. Construction.
4. Procedural matters.

1. In general.

A state "hit and run" statute, requiring the driver of a motor vehicle involved in an accident resulting in damage to any property to stop at the scene and give his name and address, does not violate the constitutional privilege against compulsory self-incrimination. California v. Byers, 402 U.S. 424, 91 S. Ct. 1535, 29 L. Ed. 2d 9, 1971 U.S. LEXIS 128 (U.S. 1971).

2. Application.

This section [Code 1942, § 8163], which makes it mandatory for the driver of a vehicle to stop such vehicle at the scene of accident and render reasonable assistance to the person injured, is not limited in its application to persons who have contributed to the accident in the sense that such persons must be shown to have been at fault or to have been guilty of negligence, which was a contributing approximate cause of the accident. Meadows v. State, 211 Miss. 557, 52 So. 2d 289, 1951 Miss. LEXIS 386 (Miss. 1951).

3. Construction.

The duty to "render assistance" to persons injured in the first accident did not relieve the defendant, whose negligence caused the first accident, of the duty of removing or attempting to remove his disabled vehicle from the highway where his vehicle was struck by a second vehicle. Huff v. Boyd, 242 So. 2d 698, 1971 Miss. LEXIS 1496 (Miss. 1971).

One of the main purposes of this section [Code 1942, § 8163] is to enable the persons injured and the officers investigating the accident to determine who is at fault, and to compel the driver of the car involved in the accident to render humanitarian assistance to the persons injured, whether he was guilty of negligence in the operation of his vehicle at the time of the accident or not. Meadows v. State, 211 Miss. 557, 52 So. 2d 289, 1951 Miss. LEXIS 386 (Miss. 1951).

4. Procedural matters.

Since no question of negligence is involved in the failure to comply with this section [Code 1942, § 8163], the trial court properly refused to instruct that the fact that the defendant left the scene of the motor vehicle accident was a strong presumption that he was guilty of negligence by failing to stay at the scene of the accident and rendering first aid to the plaintiff and assisting in calling an ambulance and discharging other duties owed to the plaintiff. Clark v. Mask, 232 Miss. 65, 98 So. 2d 467, 1957 Miss. LEXIS 445 (Miss. 1957).

An indictment under this section [Code 1942, § 8163] was not defective where it did not show the highway on which the accident occurred, or described the scene of accident or show the extent of injuries of the persons involved in the accident. Meadows v. State, 211 Miss. 557, 52 So. 2d 289, 1951 Miss. LEXIS 386 (Miss. 1951).

RESEARCH REFERENCES

ALR.

Sufficiency of compliance with requirement of criminal "hit and run" statute that motorist identify himself. 48 A.L.R.3d 685.

Rescue doctrine: liability of one who negligently causes motor vehicle accident for injuries to person subsequently attempting to rescue persons or property. 73 A.L.R.4th 737.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid. 82 A.L.R.4th 232.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 324, 325 et seq.

CJS.

60 C.J.S., Motor Vehicles § 46.

61A C.J.S., Motor Vehicles §§ 1692 et seq.

§ 63-3-407. Duties of driver involved in accident involving unattended vehicle.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. However, the provisions herein shall not apply where no material damage is done and where the owner of the unattended vehicle was guilty of negligence in leaving said vehicle parked as same was when so struck.

HISTORY: Codes, 1942, § 8164; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid. 82 A.L.R.4th 232.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 324, 325 et seq.

CJS.

60 C.J.S., Motor Vehicles § 46.

61A C.J.S., Motor Vehicles §§ 1692 et seq.

§ 63-3-409. Duties of driver striking fixtures upon or adjacent to highway.

The driver of any vehicle involved in an accident resulting only in damages to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in Section 63-3-411.

HISTORY: Codes, 1942, § 8165; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid. 82 A.L.R.4th 232.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 324, 325 et seq.

CJS.

60 C.J.S., Motor Vehicles § 46.

61A C.J.S., Motor Vehicles §§ 1692 et seq.

§ 63-3-411. Duties of drivers involved in accidents involving injury or death or property damage of $500 or more to report accidents; supplemental reports; investigations and reports by law enforcement officers.

(1) The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of Five Hundred Dollars ($500.00) or more shall immediately, by the quickest means of communication, give notice of the collision to the local police department if the collision occurs within an incorporated municipality, or if the collision occurs outside of an incorporated municipality to the nearest sheriff's office or highway patrol station.

(2) The department may require any driver of a vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report is insufficient in the opinion of the department. Additionally, the department may require witnesses of accidents to render reports to the department.

(3) It shall be the duty of the highway patrol or the sheriff's office to investigate all accidents required to be reported by this section when the accident occurs outside the corporate limits of a municipality, and it shall be the duty of the police department of each municipality to investigate all accidents required to be reported by this section when the accidents occur within the corporate limits of the municipality.

Every law enforcement officer who investigates an accident as required by this subsection, whether the investigation is made at the scene of the accident or by subsequent investigation and interviews, shall forward within six (6) days after completing the investigation a written report of the accident to the department if the accident occurred outside the corporate limits of a municipality, or to the police department of the municipality if the accident occurred within the corporate limits of such municipality. Police departments shall forward such reports to the department within six (6) days of the date of the accident.

(4) Whenever an engineer of a railroad locomotive, or other person in charge of a train, is required to show proof of his identity under the provisions of this article, in connection with operation of such locomotive, to any law

enforcement officer, such person shall not be required to display his operator's or chauffeur's license but shall display his railroad employee number.

(5) In addition to the information required on the "statewide uniform traffic accident report" forms provided by Section 63-3-415, the department shall require the parties involved in an accident and the witnesses of such accident to furnish their phone numbers in order to assist the investigation by law enforcement officers.

HISTORY: Codes, 1942, § 8166; Laws, 1938, ch. 200; Laws, 1976, ch. 446, § 1; Laws, 1989, ch. 326, § 1; Laws, 1990, ch. 441, § 1; Laws, 2000, ch. 563, § 1; Laws, 2003, ch. 485, § 1, eff from and after July 1, 2003.

Cross References — Accident report required to be furnished sheriff following boating accident or collision, see §§ 59-21-51, 59-21-53.

Use of statewide uniform traffic accident report forms, see § 63-3-415.

Confidentiality of accident reports, see § 63-3-417.

Accident report required to be furnished public service commission by proper officer of motor carrier, see § 77-7-181.

Accident report required to be furnished public service commission following railway accident, see § 77-9-431.

OPINIONS OF THE ATTORNEY GENERAL

A separate investigative report prepared by an officer on a form other than that required by Section 63-3-411 and Section 63-3-415 would be considered a supplemental report as referenced by section 63-3-417, and would be subject to the confidentiality requirements contained therein. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

RESEARCH REFERENCES

ALR.

Failure to comply with statute requiring one involved in automobile accident to stop or report as affecting question as to suspension or tolling statute of limitations. 10 A.L.R.2d 564.

Admissibility of police officer's testimony at state trial relating to motorist's admissions made in or for automobile accident report required by law. 46 A.L.R.4th 291.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid. 82 A.L.R.4th 232.

Discoverability of traffic accident reports and derivative information. 84 A.L.R.4th 15.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 324, 325 et seq.

CJS.

60 C.J.S., Motor Vehicles, § 46.

61A C.J.S., Motor Vehicles §§ 1692 et seq.

§ 63-3-413. Reporting of accident by occupant of vehicle when driver incapable of reporting.

Whenever the driver of a vehicle is physically incapable of making a required accident report and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made said report.

HISTORY: Codes, 1942, § 8167; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.
Discoverability of traffic accident reports and derivative information. 84 A.L.R.4th 15.

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 324, 325 et seq.

CJS.
60 C.J.S., Motor Vehicles § 38.
61A C.J.S., Motor Vehicles §§ 1692 et seq.

§ 63-3-415. Accident report forms.

(1) The department shall prepare and furnish "statewide uniform traffic accident report" forms to other agencies, municipal police departments, county sheriffs and other suitable law enforcement agencies or individuals. The department may charge an amount not exceeding the actual costs incurred by the department in preparing and furnishing the forms. The Department of Public Safety also may make such forms available in electronic format, which shall be accessible by law enforcement departments and other agencies without charge.

(2) Every accident report required by Section 63-3-411 from a law enforcement officer or individual shall be made on the statewide uniform traffic accident report form provided by the department.

(3) In addition to the information required on the accident report forms provided for herein, the department shall include a place on such report forms for the phone numbers of the parties involved in the accident and any witnesses to such accident.

(4) "Statewide uniform traffic accident report" forms shall not have printed upon them the name of any elected state official.

HISTORY: Codes, 1942, § 8168; Laws, 1938, ch. 200; Laws, 1984, ch. 485; Laws, 1986, ch. 459, § 36; Laws, 1990, ch. 441, § 2; Laws, 2002, ch. 446, § 2, eff from and after July 1, 2002.

Cross References — Witnesses to accident to furnish phone numbers in order to assist investigation by law enforcement officers, see § 63-3-411.

OPINIONS OF THE ATTORNEY GENERAL

Traffic accident reports prepared by law enforcement agencies are subject to the confidentiality requirements of Section 63-3-417 and they are not available to the general public pursuant to the Mississippi Public Records Act. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

A separate investigative report prepared by an officer on a form other than that required by Section 63-3-411 and

Section 63-3-415 would be considered a supplemental report as referenced by section 63-3-417, and would be subject to the confidentiality requirements contained therein. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

RESEARCH REFERENCES

ALR.

Discoverability of traffic accident reports and derivative information. 84 A.L.R.4th 15.

§ 63-3-417. Disclosure of information in accident reports; fraudulently obtaining information contained in report; penalties.

(1) All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and, except as otherwise provided in this section, shall be for the confidential use of the department; however, the department may, upon written request of any person involved in an accident, the spouse or next of kin of any such person, or any person against whom a claim is made as a result of the accident or upon written request of the representative of his estate, disclose to such requester or his legal counsel or a representative of his insurer any information contained in such report except the parties' version of the accident as set out in the written report filed by such parties, or may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. The admissibility of an accident report into evidence in any court shall be governed by the Mississippi Rules of Evidence. However, the department shall furnish, upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such a report be made to the department.

(2)(a) Notwithstanding the provisions of subsection (1) of this section or the provisions of any other law to the contrary, the department may supply vehicle-specific accident data to any person or entity, in bulk electronic form, for the purpose of compiling vehicle history reports for use by law enforcement, consumers and businesses. The department may charge and collect fees at a negotiated price established by the department for providing such data; however, the department may not agree to grant to any person or entity an exclusive right to receive information or data under this subsection. A person or entity that requests access to such data must agree, in writing, to use information obtained from such data only for the purpose of identifying vehicles that have been involved in accidents and any damage to those vehicles. A person or entity obtaining such data may not use such information to identify or contact persons or individuals.

(b) The department shall retain and deposit into a special fund that is hereby created in the State Treasury so much of the fees collected as may be necessary to defray the actual costs that the department incurs in retrieving, furnishing and maintaining the records and data requested under this subsection. Monies in the special fund may be expended, upon legislative appropriation, to defray such costs. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any income earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund. That portion of the fees collected in excess of the amount necessary to defray the actual costs that the department incurs in retrieving, furnishing and maintaining the records and data requested under this subsection shall be deposited in the State General Fund as provided under Section 45-1-23.

(3) The report required by Section 63-3-411 may be used in proving uninsured status of the owner and operator of a vehicle in any action to enforce a claim under the uninsured motorist provisions of an automobile liability policy, but only as provided in Section 13-1-124.

(4) Any person to whom information contained in an accident report is not authorized to be disclosed under this section who fraudulently obtains or fraudulently attempts to obtain a copy of such report or information contained in such report shall be guilty of a misdemeanor and such person, upon conviction, shall be punished by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or imprisonment in the county jail for a term of not more than six (6) months, or by both such fine and imprisonment.

HISTORY: Codes, 1942, § 8170; Laws, 1938, ch. 200; Laws, 1981, ch. 361, § 2; Laws, 1985, ch. 303; Laws, 1991, ch. 573, § 116; Laws, 2005, ch. 313, § 1; Laws, 2005, ch. 314, § 1; Laws, 2007, ch. 492, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Section 1 of ch. 313, Laws of 2005, effective from and after July 1, 2005 (approved March 10, 2005), amended this section. Section 1 of ch. 314, Laws of 2005, effective July 1, 2005 (approved March 10, 2005), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 314, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes — Section 13-1-124, referred to in subsection (3), was repealed by Laws of 1991, ch. 573, § 141, effective from and after July 1, 1991.

Cross References — Similar provision regarding use of accident report required by the motor vehicle safety-responsibility law as evidence of uninsured status, see § 63-15-23.

Action against owner or operator of an uninsured motor vehicle, see § 83-11-105.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Reports by law enforcement.

1. In general.

This section [Code 1942, § 8170] applies only to reports required to be filed by parties involved in accidents. Boyd v. Donald, 250 Miss. 618, 167 So. 2d 661, 1964 Miss. LEXIS 482 (Miss. 1964).

2. Reports by law enforcement.

This section [Code 1942, § 8170] does not require the police officer investigating an accident to make a report. Boyd v. Donald, 250 Miss. 618, 167 So. 2d 661, 1964 Miss. LEXIS 482 (Miss. 1964).

This section [Code 1942, § 8170] did not preclude the admission of a report prepared by highway patrolman who had investigated the accident for the purpose of impeaching the officer's testimony. Boyd v. Donald, 250 Miss. 618, 167 So. 2d 661, 1964 Miss. LEXIS 482 (Miss. 1964).

OPINIONS OF THE ATTORNEY GENERAL

Accident report or portions of it written by persons involved giving their version of facts are private and are not to be released under our law, including copies in possession of police department; however, police officer's investigative report, including officer's report or oral statements of persons involved, is not prohibited from release. Twiford, July 22, 1992, A.G. Op. #92-0496.

Municipalities and police departments may adopt reasonable procedures, including release forms, to verify that persons requesting accident report information are eligible, under statute, to receive it. Long, March 6, 1998, A.G. Op. #98-0092.

Traffic accident reports prepared by law enforcement agencies are subject to the confidentiality requirements of Section 63-3-417 and they are not available to the general public pursuant to the Mississippi Public Records Act. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

A separate investigative report prepared by an officer on a form other than that required by Section 63-3-411 and Section 63-3-415 would be considered a supplemental report as referenced by section 63-3-417, and would be subject to the confidentiality requirements contained therein. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutory provisions relating to public access to police records. 82 A.L.R.3d 19.

Admissibility of police officer's testimony at state trial relating to motorist's admissions made in or for automobile accident report required by law. 46 A.L.R.4th 291.

Discoverability of traffic accident reports and derivative information. 84 A.L.R.4th 15.

§ 63-3-419. Reporting by hospitals and medical examiners of deaths from motor vehicle accidents.

(1) Every county medical examiner or county medical examiner investigator shall, on or before the tenth day of each month, report in writing to the department the death of any person within his jurisdiction during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of such accident.

(2) Every hospital shall notify the county medical examiner or county medical examiner investigator of the county in which the accident occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in an accident involving a motor vehicle.

HISTORY: Codes, 1942, § 8169; Laws, 1938, ch. 200; Laws, 1976, ch. 446, § 2; Laws, 1986, ch. 459, § 37, eff from and after July 1, 1986.

Cross References — Mississippi Medical Examiner Act of 1986, see §§ 41-61-51 et seq.

RESEARCH REFERENCES

ALR.

Discoverability of traffic accident reports and derivative information. 84 A.L.R.4th 15.

§ 63-3-421. Tabulation and analysis of accident reports.

The department shall receive accident reports required by this article, and shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

HISTORY: Codes, 1942, § 8171; Laws, 1938, ch. 200; Laws, 1976, ch. 446, § 3, eff from and after July 1, 1976.

RESEARCH REFERENCES

ALR.

Discoverability of traffic accident reports and derivative information. 84 A.L.R.4th 15.

§ 63-3-423. Requirement of accident reports by municipal corporations; confidentiality of reports.

Any incorporated city, town, village, or other municipality, may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report required under this article to be filed with the department. Any such report shall be for the confidential use of the city department and shall be subject to the provisions of Section 63-3-417.

HISTORY: Codes, 1942, § 8172; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutory provisions relating to public access to police records. 82 A.L.R.3d 19.

Discoverability of traffic accident reports and derivative information. 84 A.L.R.4th 15.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 324, 325 et seq.

CJS.

60 C.J.S., Motor Vehicles § 46.

61A C.J.S., Motor Vehicles §§ 1692 et seq.

§ 63-3-425. Duty of driver involved in accident without serious injury or death to move vehicle to designated accident investigation site if possible; violation.

(1) If a traffic accident occurs without serious injury or death on a main lane, ramp, shoulder, median, or adjacent area of a highway in this state and each vehicle involved can be normally and safely driven, each operator shall move the operator's vehicle as soon as possible to a designated accident investigation site, if available, a location on the frontage road, the nearest suitable cross-street, or other suitable location to complete the other requirements under the law and minimize interference with highway traffic.

(2) Under this section, a vehicle can be normally and safely driven only if the operator is capable of safely operating the vehicle to move it and only if the vehicle:

(a) Does not require towing; and

(b) Can be operated under its own power and in its usual manner, without additional damage or hazard to the vehicle, other traffic, or the roadway.

(3) For purposes of this section, "serious injury" means an injury that results in the need of an ambulance or other emergency medical transportation being called to the scene of the accident.

(4) Beginning on July 1, 2021, a person who does not comply with the requirements of this section shall be punished in accordance with Section 63-9-11.

(5) The Mississippi Department of Transportation shall determine and erect appropriate signs in appropriate locations throughout the state to inform the public about the new state law provided for in this section.

HISTORY: Laws, 2020, ch. 397, § 1, eff from and after July 1, 2020.

ARTICLE 11.

RESTRICTIONS ON SPEED; USE OF RADAR.

Sec.
63-3-501. Maximum speed limits on state, interstate and controlled access highways; maximum speed limit on toll roads.
63-3-502. Penalties for conviction of driving motor vehicle or motorcycle on street or highway in a race.
63-3-503. Modification of maximum speed limits by state highway commission; maximum penalties for violations.
63-3-505. Conditions under which speed must be decreased.
63-3-507. Details of complaint and summons or notice to appear alleging speeding violation.
63-3-509. Minimum speed limits.
63-3-511. Modification of speed limits by local authorities; establishment of speed limits upon roads of correctional facilities; modification of local limits to conform to lower limits established by state highway commission.
63-3-513. Special speed limitation on bridges and elevated structures; proof of violations.

Sec.
63-3-515. Speed limits near schools and churches, upon levees and causeways, and in other designated special zones.
63-3-516. Speed limits within highway work zones; penalties for violations.
63-3-517. Applicability of speed restrictions to emergency vehicles; duties of drivers of emergency vehicles.
63-3-519. Use of radar speed detection equipment; authorization and limitations; notification of road blockages or emergencies on certain federally designated limited-access highways.
63-3-521. Use of radar speed detection equipment; penalties for violations.

§ 63-3-501. Maximum speed limits on state, interstate and controlled access highways; maximum speed limit on toll roads.

Except as otherwise provided in this section, no person shall operate a vehicle on the highways of the state at a speed greater than sixty-five (65) miles per hour.

The Mississippi Transportation Commission may, in its discretion, by order duly entered on its minutes, increase the speed restrictions on any portion of the Interstate Highway System provided such speed restrictions are not increased to more than seventy (70) miles per hour. The commission may likewise increase the speed limit to seventy (70) miles per hour on controlled access highways with four (4) or more lanes.

A governmental entity that operates and maintains a toll road as authorized under Section 65-43-1, or that contracts with some person or business to operate and maintain a toll road as authorized under Section 65-43-3, may establish the maximum speed for motor vehicles operated on any such toll road; however, the maximum speed so established may not exceed eighty (80) miles per hour.

HISTORY: Codes, 1942, § 8176; Laws, 1938, ch. 200; Laws, 1948, ch. 328, § 1; Laws, 1962, ch. 524; Laws, 1966, ch. 571, § 1; Laws, 1970, ch. 442, § 1; Laws, 1976, ch. 318; Laws, 1996, ch 303, § 1; Laws, 2008, 1st Ex Sess, ch. 44, § 3, eff from and after passage (approved June 2, 2008).

Cross References — Powers and duties of the Mississippi Transportation Commission, generally, see § 65-1-8.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Duty of motorists.
3. Presumption of negligence.
4. Liability.
5. Proximate cause.
6. Comparative negligence.
7. Manslaughter.
8. Evidence.
9. Questions for jury.
10. Instructions.
11. Verdict.
12. Miscellaneous.

13.-20. [Reserved for future use.]

21. Under former law.

1. In general.

The law fixing a permissible speed presupposes a compliance with the duty to keep the car under control and be on the alert for objects on the highway. Robertson v. Welch, 242 Miss. 110, 134 So. 2d 491, 1961 Miss. LEXIS 536 (Miss. 1961).

A motorist about to turn left in front of an approaching car may assume that such car is not exceeding a lawful speed, only until he knows, or in the exercise of reasonable care should know, that the speed is such that the turn cannot be safely made. Cothern v. Brewer, 234 Miss. 676, 107 So. 2d 361, 1958 Miss. LEXIS 538 (Miss. 1958).

This section [Code 1942, § 8176] makes the prohibited speed prima facie evidence of guilt, but does not exclude any valid defense. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

Maximum speed allowed is such rate of speed as is reasonable and proper having due regard to the traffic or use of the highway, or such as will not endanger the life or limb of any person or the safety of any property. Snyder v. Campbell, 145 Miss. 287, 110 So. 678, 1926 Miss. LEXIS 33 (Miss. 1926).

2. Duty of motorists.

The presence of an intersection with which the motorist was fully familiar heightened his duty to exercise reasonable care in operating his car at such speed as would permit him to take the necessary steps to avoid colliding with a pedestrian using the road, and within his length of vision ahead as provided by his headlights. Parkins v. Brown, 241 F.2d 367, 1957 U.S. App. LEXIS 3472 (5th Cir. Miss. 1957).

"Control" of vehicles within statute requiring control of vehicles at all times means that driver shall have ability to stop readily and easily. Collins Baking Co. v. Wicker, 166 Miss. 264, 142 So. 8, 1932 Miss. LEXIS 303 (Miss. 1932).

Motorist must drive at rate of speed enabling him to avoid injury to persons who should come under his observation. Frazier v. Hull, 157 Miss. 303, 127 So. 775, 1930 Miss. LEXIS 279 (Miss. 1930).

Driver must keep automobile under control and be on alert for pedestrians. Snyder v. Campbell, 145 Miss. 287, 110 So. 678, 1926 Miss. LEXIS 33 (Miss. 1926).

Driver or owner of motor vehicle must show due care and observance of the statute. Flynt v. Fondren, 122 Miss. 248, 84 So. 188, 1920 Miss. LEXIS 433 (Miss. 1920).

Automobile driver must keep his machine constantly under control and be on the alert for and anticipate the presence of pedestrians and others using the streets. Ulmer v. Pistole, 115 Miss. 485, 76 So. 522, 1917 Miss. LEXIS 222 (Miss. 1917).

3. Presumption of negligence.

In an action arising out of intersection motor vehicle collision, the court's instruction that if the driver of a truck which was not a "pick-up" truck, was violating the law in driving the truck at a speed of more than 45 miles per hour, such fact did not raise any presumptions of negligence on the part of the driver, was error in view of this section [Code 1942, § 8176]. Hill v. Columbus Ice Cream & Creamery Co., 230 Miss. 634, 93 So. 2d 634, 1957 Miss. LEXIS 404 (Miss. 1957).

Motorist approaching and entering intersection at unabated speed of approximately 30 miles per hour is prima facie negligent. Moore v. Abdalla, 197 Miss. 125, 19 So. 2d 502, 1944 Miss. LEXIS 281 (Miss. 1944).

Statutory presumption of negligence on part of party shown to have violated motor vehicle law disappears when all facts and circumstances on issue of liability are in evidence. White v. Weitz, 169 Miss. 102, 152 So. 484, 1934 Miss. LEXIS 9 (Miss. 1934).

One driving automobile at more than ten miles an hour at night without lights was prima facie negligent. McLaurin v. McLaurin Furniture Co., 166 Miss. 180, 146 So. 877, 1933 Miss. LEXIS 365 (Miss. 1933), overruled, Burns v. Burns, 518 So. 2d 1205, 1988 Miss. LEXIS 18 (Miss. 1988).

Prima facie case of negligence arising from violation of statute governing speed of automobile is rebuttable. Rhodes v. Fullilove, 161 Miss. 41, 134 So. 840, 1931 Miss. LEXIS 250 (Miss. 1931).

Automobile driver, killing mule while driving at excessive speed, was prima facie negligent. Lucedale Auto. Co. v. Daughdrill, 154 Miss. 707, 123 So. 871, 1929 Miss. LEXIS 186 (Miss. 1929).

4. Liability.

Driving an automobile on a highway under the influence of intoxicants, or at a high and unlawful rate of speed, is not only dangerous but is negligence per se, and if such negligence contributes to an injury the defendant is liable in damages. Freeze v. Taylor, 257 So. 2d 509, 1972 Miss. LEXIS 1459 (Miss. 1972).

Motorist prevented by bright lights of truck standing on highway from seeing beyond such lights, held negligent in failing to reduce speed and to proceed with caution, rendering him liable for striking person standing on highway. Kettle v. Musser's Potato Chips, Inc., 249 Miss. 212, 162 So. 2d 243, 1964 Miss. LEXIS 388 (Miss. 1964).

Motorist failing to slow down on being blinded by lights of approaching car held liable for death of pedestrian struck while walking on side of road. Layton v. Cook, 248 Miss. 690, 160 So. 2d 685, 1964 Miss. LEXIS 293 (Miss. 1964).

Motorist who, while traveling at unlawful rate of speed, struck pedestrian after seeing him on highway, held liable for injuries to pedestrian, even though pedestrian was contributorily negligent, since damages recoverable would be reduced in proportion to pedestrian's negligence. Hadad v. Lockeby, 176 Miss. 660, 169 So. 691, 1936 Miss. LEXIS 140 (Miss. 1936).

Presence of ditched car on right-hand side of road and another automobile backed near it to render aid, held not independent intervening cause of passenger's injury when bus, claimed to have been operated at excessive speed and without proper lookout on approaching curve, ran into ditch to avoid collision. Oliver Bus Lines v. Skaggs, 174 Miss. 201, 164 So. 9, 1935 Miss. LEXIS 56 (Miss. 1935).

Employer held liable for wilful and wanton acts resulting in injury to boy whom driver of truck had invited to ride thereon. Trico Coffee Co. v. Clemens, 168 Miss. 748, 151 So. 175, 1933 Miss. LEXIS 210 (Miss. 1933).

Motorist exceeding legal speed limit, and as a result inflicting injury on another, is liable therefor. Teche Lines, Inc. v. Bateman, 162 Miss. 404, 139 So. 159, 1932 Miss. LEXIS 117 (Miss. 1932), overruled in part, Twin County Elec. Power Ass'n v. McKenzie, 823 So. 2d 464, 2002 Miss. LEXIS 175 (Miss. 2002).

Driving automobile at night at speed not permitting driver to avoid injury to persons coming within range of lights is negligence. Frazier v. Hull, 157 Miss. 303, 127 So. 775, 1930 Miss. LEXIS 279 (Miss. 1930).

Pedestrian's negligence does not relieve automobile driver from exercising reasonable care. Snyder v. Campbell, 145 Miss. 287, 110 So. 678, 1926 Miss. LEXIS 33 (Miss. 1926).

Pedestrian's recovery for injuries by automobile should be reduced in proportion to negligence in crossing street. Snyder v. Campbell, 145 Miss. 287, 110 So. 678, 1926 Miss. LEXIS 33 (Miss. 1926).

Driving automobile at dangerous rate of speed upon a populous and frequently used street is negligence per se. Ulmer v. Pistole, 115 Miss. 485, 76 So. 522, 1917 Miss. LEXIS 222 (Miss. 1917).

5. Proximate cause.

Presence of ditched car on right-hand side of road and another automobile backed near it to render aid, held not independent intervening cause of passenger's injury when bus, claimed to have been operated at excessive speed and without proper lookout on approaching curve, ran into ditch to avoid collision. Oliver Bus Lines v. Skaggs, 174 Miss. 201, 164 So. 9, 1935 Miss. LEXIS 56 (Miss. 1935).

Court may, notwithstanding all facts regarding automobile collision are in evidence, instruct jury that violation of motor vehicle statute by defendant is negligence and entitles plaintiff to recover where it is proximate cause of injury, or that violation of statute by plaintiff which is sole proximate cause of injury defeats plaintiff's recovery. White v. Weitz, 169 Miss. 102, 152 So. 484, 1934 Miss. LEXIS 9 (Miss. 1934).

Bus company was liable for injury to automobile occupant if proximately caused by gravel thrown by bus because of its reckless negligence and excessive speed. Teche Lines, Inc. v. Bateman, 162 Miss. 404, 139 So. 159, 1932 Miss. LEXIS 117 (Miss. 1932), overruled in part, Twin County Elec. Power Ass'n v. McKenzie, 823 So. 2d 464, 2002 Miss. LEXIS 175 (Miss. 2002).

Undisputed testimony held to establish that automobile driver's violation of state statute regulating speed, constituting negligence, was proximate cause of collision. Terry v. Smylie, 161 Miss. 31, 133 So. 662, 1931 Miss. LEXIS 241 (Miss. 1931).

Unlawful speed of automobile must be proximate contributing cause of injury to make unlawful speed an element of liability. Pounders v. Day, 151 Miss. 436, 118 So. 298, 1928 Miss. LEXIS 324 (Miss. 1928); Rowlands v. Morphis, 158 Miss. 662, 130 So. 906, 1930 Miss. LEXIS 92 (Miss. 1930).

6. Comparative negligence.

In an action for injury sustained when plaintiff's coal truck struck defendant's pick-up truck which was making a left turn in front of plaintiff's vehicle to enter an intersecting county road, even if plaintiff was contributorily negligent in driving at an excessive speed while visibility was poor, and failing to blow his horn, and in failing to slow down as he approached the intersection, under Code 1942, § 1454, he was not barred from recovery, although the amount of damages which he might otherwise have been entitled to recover would be diminished in proportion to the amount of negligence, if any, attributable to him. Cobb v. Williams, 228 Miss. 807, 90 So. 2d 17, 1956 Miss. LEXIS 568 (Miss. 1956).

Where defendant's driver was grossly negligent in entering intersection at 50 miles per hour without stopping as required by Code 1942, § 8213, and collided with plaintiff's driver who, in entering the intersection on a through street at unabated speed of 30 miles per hour, was prima facie negligent under this section [Code 1942, § 8176], the negligence of plaintiff's driver was a contributing factor to the accident and warranted application of the comparative negligence statute (Code 1942, § 1454). Moore v. Abdalla, 197 Miss. 125, 19 So. 2d 502, 1944 Miss. LEXIS 281 (Miss. 1944).

7. Manslaughter.

Motorist exceeding speed fixed by law fails to exercise legal measure of due care prescribed by state, and speed so much above legal rate as to leave no doubt that excess was intentional and wilful constitutes culpable want of due care as respects injuries proximately resulting therefrom, so that homicide proximately caused by such wilfully excessive speed is manslaughter. Wilson v. State, 173 Miss. 372, 161 So. 744, 1935 Miss. LEXIS 231 (Miss. 1935).

Motorists' habitual violation of statute, limiting speed in closely built-up territory to twenty miles an hour, and disregard of pedestrians' rights by many motorists, furnish no excuse for courts to refuse to enforce law or depart therefrom in case wherein facts justify conviction of motorist for manslaughter in causing pedestrian's death by wilful violation of speed law. Wilson v. State, 173 Miss. 372, 161 So. 744, 1935 Miss. LEXIS 231 (Miss. 1935).

8. Evidence.

Where the speed of a vehicle is a factor in determining the proximate cause of a collision, evidence as to speed should be limited to the time of, or immediately before, the collision, and the court should exclude, evidence of speed prior to and remote from the collision in question; but evidence of prior speed may be admitted if the evidence shows that the vehicle continued to be operated at approximately the same speed until collision occurs, or where the circumstances are such that prior speed has substantial evidential values as to the speed of the vehicle at the time of, or immediately before, the collision. Barrett v. Shirley, 231 Miss. 364, 95 So. 2d 471, 1957 Miss. LEXIS 521 (Miss. 1957).

Error in personal injury case in admitting evidence of a municipal speed ordinance because it was not pleaded in the declaration could not be complained of where the pertinent provision of the ordinance as to the applicable speed limit was identical with that of this section [Code 1942, § 8176] and it was alleged in the declaration that defendant was running at a reckless speed in violation of the law. Howell v. George, 201 Miss. 783, 30 So. 2d 603, 1947 Miss. LEXIS 446 (Miss. 1947).

Defendant could not complain of conviction for violating city ordinance adopting provisions of this section [Code 1942, § 8176] on ground that the summons or notice to appear and defend contained no specification of speed at which defendant was charged to have driven, where defendant appeared and defended without making such point in the trial court. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

Evidence that defendant was driving at greater speed than that prescribed by this section [Code 1942, § 8176], or by city ordinance adopting provisions thereof, establishes defendant's guilt beyond a reasonable doubt, where defendant fails to offer any evidence in justification thereof. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

In an action by an automobile owner to recover for personal injuries sustained by him when he attempted to avoid an anticipated collision with the defendant's truck which was entering the intersection from a side road, evidence of the physical condition at the scene of the accident and that the truck stopped either before entering the paved part of the intersection or when it reached the center thereof, disproved any contention that the truck was driving at a greater rate of speed than was reasonable and proper when it approached the intersection in question or that the driver in any manner violated the provisions of this section [Code 1942, § 8176]. Coca Cola Bottling Works v. Hand, 186 Miss. 893, 191 So. 674, 1939 Miss. LEXIS 271 (Miss. 1939).

Evidence as to bus driver's violation of speed statute and sharp curve statute and of failure to keep proper lookout held sufficient to make issue for jury of driver's negligence in action for passenger's injuries when bus ran into ditch as result of driver's effort to avoid striking automobile on side of road. Oliver Bus Lines v. Skaggs, 174 Miss. 201, 164 So. 9, 1935 Miss. LEXIS 56 (Miss. 1935).

Evidence of motorists' wilful and intentional operation of automobile at speed grossly exceeding statutory limit across pedestrians' path alongside railroad track at street crossing and death of pedestrian as proximate or concurrently proximate result of such law violation held to sustain conviction of manslaughter. Wilson v. State, 173 Miss. 372, 161 So. 744, 1935 Miss. LEXIS 231 (Miss. 1935).

Privilege tax statute defining trucks as motor vehicles used in business of transporting property not applying to statute restricting speed of trucks to thirty miles per hour, plaintiff in personal injury action held not required to show that defendant's automobile exceeding speed limit for trucks was engaged in business of transporting property. Pollard v. Stansell, 169 Miss. 136, 152 So. 646, 1934 Miss. LEXIS 16 (Miss. 1934).

In prosecution against automobile driver for failure to reasonably turn to right, evidence showing defendant exceeded speed limit was inadmissible. Naylor v. State, 158 Miss. 99, 130 So. 102, 1930 Miss. LEXIS 24 (Miss. 1930).

Under evidence jury could not find defendant motorist's negligent speed did not contribute to injury of plaintiff struck when replacing tools in automobile on highway at night. Frazier v. Hull, 157 Miss. 303, 127 So. 775, 1930 Miss. LEXIS 279 (Miss. 1930).

9. Questions for jury.

In an action for damages resulting when defendant's truck-trailer unit ran into the rear end of plaintiff's truck-trailer unit on the curved portion of the highway, the court did not err in refusing to charge the defendant's driver with negligence in respect to speeding, overtaking on the right, and following too closely, particularly in view of Code 1942, § 1455. Green Truck Lines, Inc. v. Hooper, 233 Miss. 794, 103 So. 2d 443, 1958 Miss. LEXIS 441 (Miss. 1958).

In an action for personal injuries sustained by a plaintiff when his automobile was struck from the rear by the defendant's automobile, where the evidence presented jury questions as to whether the defendant was negligent in driving at an excessive speed, or following another vehicle too closely, or in failing to have his vehicle under proper control, or whether the sole proximate cause of the collision was the manner in which the plaintiff's vehicle was driven into the intersection, the trial court erred in directing a verdict for plaintiff on the issue of liability. Buntyn v. Robinson, 233 Miss. 360, 102 So. 2d 126, 1958 Miss. LEXIS 391 (Miss. 1958).

In an action for the death of eight-year-old child killed when struck by a large diesel trailer truck, not equipped with service brakes, it was for the jury to determine whether the truck driver was negligent in driving at a speed in excess of 45 miles an hour, in failing to maintain a proper lookout for persons on the highway, and failing to observe the movements of a child crossing the highway in time to avoid injuring her; in failing to maintain proper control of his vehicle after he saw, or by the exercise of reasonable care, should have seen the child on the highway, and whether the driver's negligence, if any, was the approximate or contributing cause of the death of the child. Reed v. Eubanks, 232 Miss. 27, 98 So. 2d 132, 1957 Miss. LEXIS 441 (Miss. 1957).

In an action by occupant of a truck against driver to recover for injuries sustained when the truck went off highway on curve, where evidence was conflicting to some extent, there was no prejudicial error in submitting issue of negligence for determination of jury. Shearron v. Shearron, 219 Miss. 27, 68 So. 2d 71, 1953 Miss. LEXIS 369 (Miss. 1953), modified, 219 Miss. 27, 69 So. 2d 801, 1954 Miss. LEXIS 341 (Miss. 1954).

Whether bus driver could have reasonably foreseen possibility of injury, held for jury. Wheat v. Teche Lines, Inc., 181 Miss. 408, 179 So. 553, 1938 Miss. LEXIS 83 (Miss. 1938).

Under evidence, question whether bus driver was traveling at reasonable rate of speed, and whether bus was in such close proximity to plaintiff as to endanger life or limb, held for jury. Wheat v. Teche Lines, Inc., 181 Miss. 408, 179 So. 553, 1938 Miss. LEXIS 83 (Miss. 1938).

Automobile chauffeur's negligence in permitting owner's son to drive automobile while intoxicated, resulting in injury to child, held for jury. Slaughter v. Holsomback, 166 Miss. 643, 147 So. 318, 1933 Miss. LEXIS 368 (Miss. 1933).

Whether motorist in rear had automobile under control and whether truck driver ahead, stopping on bridge, exercised ordinary care at and immediately before collision held for jury. Collins Baking Co. v. Wicker, 166 Miss. 264, 142 So. 8, 1932 Miss. LEXIS 303 (Miss. 1932).

Whether excessive speed of truck, or plaintiff's act in placing himself at rear of stalled automobile, was proximate cause of plaintiff's injury, held for jury under evidence. Rhodes v. Fullilove, 161 Miss. 41, 134 So. 840, 1931 Miss. LEXIS 250 (Miss. 1931).

Whether automobile driver was exceeding fifteen miles per hour at time of striking mule held for jury. Lucedale Auto. Co. v. Daughdrill, 154 Miss. 707, 123 So. 871, 1929 Miss. LEXIS 186 (Miss. 1929).

Negligence in driving automobile fifteen miles per hour at time of striking pedestrian crossing the street held for jury. Snyder v. Campbell, 145 Miss. 287, 110 So. 678, 1926 Miss. LEXIS 33 (Miss. 1926).

10. Instructions.

In a suit for the death of a child pedestrian struck by an automobile, the plaintiff was not entitled to an instruction that the driver of the automobile was guilty of negligence as a matter of law by reason of the driver's alleged failure to decrease the speed of his automobile as he approached the intersection, where the evidence as to the automobile's speed was in conflict. Young v. Schwarz, 230 So. 2d 583, 1970 Miss. LEXIS 1560 (Miss. 1970).

The admission of a defendant motorist involved in an intersectional accident that she failed to reduce her speed on approaching the intersection would only entitle the plaintiff to an instruction that the defendant's failure to reduce her speed was negligence and that if such negligence caused or contributed to the accident then he was entitled to a verdict against her. Richardson v. Adams, 223 So. 2d 536, 1969 Miss. LEXIS 1275 (Miss. 1969).

Where there was evidence that defendant's truck was traveling at about 60 miles an hour as it approached and entered the intersection, the lower court properly instructed the jury that if the truck was being operated at a greater rate of speed than 50 miles per hour immediately before the collision such speed would constitute negligence, and if such negligence proximately contributed to the collision then the verdict should be for the plaintiffs. Bush Constr. Co. v. Walters, 250 Miss. 384, 164 So. 2d 900, 1964 Miss. LEXIS 469 (Miss. 1964).

In an action for damages resulting when defendant's truck-trailer unit ran into the rear end of the plaintiff's truck-trailer unit, instructions, which when read together, focused the attention of the jury on the real issue of whether the plaintiff's truck was overtaken from behind, run into and damaged by the negligence of the defendant's driver in operating his truck without proper control, without keeping a proper lookout, and at a negligent rate of speed, or whether plaintiff's driver negligently stopped his truck on the half-moon curve in the right lane of the pavement when it was unnecessary and impractical to do so, and, if so, whether such negligence was the sole, proximate cause of the collision, were not reversibly erroneous, even though some imperfections could be found therein. Green Truck Lines, Inc. v. Hooper, 233 Miss. 794, 103 So. 2d 443, 1958 Miss. LEXIS 441 (Miss. 1958).

In an action against an automobile driver for injuries sustained by a bicyclist, where in instructions the jury was told that the plaintiff failed to keep his bicycle under control and to keep a proper lookout for others on the highway and to use due care not to place himself in a place of danger and not to create emergency he could not recover, the instruction failed to take into account the provisions of comparative negligence statutes which provide that the plaintiff's contributory negligence shall not bar a recovery, if the proof showed that the defendant was negligent and the defendant's negligence was the proximate contributing cause to the plaintiff's injuries. Rivers v. Turner, 223 Miss. 673, 78 So. 2d 903, 1955 Miss. LEXIS 422 (Miss. 1955).

An instruction that if driver of plaintiff's bus was operating it at night over public streets at such speed as not to permit driver to avoid striking vehicles coming within range of his lights, which was sole proximate cause of collision with defendant, jury should return verdict for defendant, announced sound law. Jackson City Lines v. Harkins, 204 Miss. 707, 38 So. 2d 102, 1948 Miss. LEXIS 399 (Miss. 1948).

Instruction authorizing jury to find defendant guilty of violating city ordinance adopting provisions of this section [Code 1942, § 8176], if jury believed from the evidence beyond reasonable doubt that defendant unlawfully drove automobile on city street more than 55 miles per hour, was proper, where defendant made no attempt to overcome prima facie case. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

In action for injuries sustained in collision between trucks in municipality, instructions which did not refer to regulatory statutes which were allegedly violated by defendant's truck driver, or declare that violation of statutes must contribute proximately to the collision, but which left jury to guess at what constituted negligence, were insufficient. McDonough Motor Express v. Spiers, 180 Miss. 88, 177 So. 655 (Miss. 1937).

Instruction that it was truck driver's duty to operate truck at safe rate of speed held properly refused; law requiring only reasonably safe rate. Robinson v. Haydel, 177 Miss. 233, 171 So. 7, 1936 Miss. LEXIS 266 (Miss. 1936).

In action for injuries sustained when automobile in which plaintiff was riding was struck by truck, instruction which invoked for plaintiff aid of statute regarding excessive speed and prima facie rule of evidence held erroneous, where declaration was merely sufficient to state case of common-law liability for negligence. Gulf Research Dev. Co. v. Linder, 177 Miss. 123, 170 So. 646, 1936 Miss. LEXIS 246 (Miss. 1936).

In prosecution for manslaughter by automobile, instruction that, if defendant was exceeding twenty miles per hour and exceeding speed at which reasonable or prudent man would have driven, he was guilty of culpable negligence, and authorizing conviction if death was proximate result of such culpable negligence, held reversible error. Bailey v. State, 176 Miss. 579, 169 So. 765, 1936 Miss. LEXIS 145 (Miss. 1936).

Instruction that it is violation of state law to drive automobile on public highway at greater speed than reasonable and proper, having due regard to traffic and use of highway, and that motorist must anticipate presence of other persons and vehicles on highway and drive at such rate of speed as to enable him to avoid injury to such persons, held proper. Hadad v. Lockeby, 176 Miss. 660, 169 So. 691, 1936 Miss. LEXIS 140 (Miss. 1936).

In action arising out of collision between automobile and truck on bridge, deficiency in instruction relating to precautions truck driver should have taken in approaching bridge held cured by instruction setting out statutory provisions defining duty of operator of automobile approaching bridge. Sternberg Dredging Co. v. Screws, 175 Miss. 383, 166 So. 754, 1936 Miss. LEXIS 37 (Miss. 1936).

Court may, notwithstanding all facts regarding automobile collision are in evidence, instruct jury that violation of motor vehicle statute by defendant is negligence and entitles plaintiff to recover where it is proximate cause of injury, or that violation of statute by plaintiff which is sole proximate cause of injury defeats plaintiff's recovery. White v. Weitz, 169 Miss. 102, 152 So. 484, 1934 Miss. LEXIS 9 (Miss. 1934).

Instruction that plaintiff, if exceeding speed permitted by statute, was prima facie negligent, held erroneous, where all facts and circumstances of collision were in evidence, since violation of statute would not prevent recovery unless it was sole proximate cause of collision. White v. Weitz, 169 Miss. 102, 152 So. 484, 1934 Miss. LEXIS 9 (Miss. 1934).

Instruction on rate of speed on highway where territory contiguous thereto was closely built up held erroneous under evidence. Bradford v. State, 158 Miss. 210, 127 So. 277, 1930 Miss. LEXIS 2 (Miss. 1930).

11. Verdict.

A verdict of $25,000 for the loss of an arm was excessive where the evidence showed that the negligence of the plaintiff to a very large extent contributed proximately to the injury, in that he was driving a truck without any brakes with knowledge thereof, and was violating the 30-mile speed limit for trucks prescribed by previous enactment of similar section (Code 1930, § 5569 [repealed]), during the nighttime and while he was crossing three bridges in a creek bottom one of which was very narrow. E. L. Bruce Co. v. Bramlett, 188 So. 532 (Miss. 1939).

12. Miscellaneous.

A declaration in an action seeking damages for personal injuries resulting from an automobile accident which charged special hazards, excessive rate of speed, and that the defendant negligently and in complete disregard of the rights and safety of others attempted to drive his truck between two vehicles, one stalled on the left hand lane and the other traveling in the right hand lane, was sufficient to state a cause of action. Bullock v. Sim Ramsey, Jr. Trucking Co., 207 So. 2d 628, 1968 Miss. LEXIS 1621 (Miss. 1968).

In an action arising out of a motor vehicle collision, where the evidence as to whether at the time defendant entered the intersection the plaintiff's vehicle was approaching so closely on the through highway as to constitute an immediate hazard was in sharp conflict, and the plaintiff admitted that he did not reduce his speed as he approached the intersection, the trial court did not err in refusing plaintiff's request for directed verdict. Junakin v. Kuykendall, 237 Miss. 255, 114 So. 2d 661, 1959 Miss. LEXIS 463 (Miss. 1959).

Violation of this section [Code 1942, § 8176] constitutes a misdemeanor and fine of $100 may be imposed therefor, by virtue of Code 1942, § 8275. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

Affidavit that defendant wilfully and unlawfully drove automobile over public street or highway in city at rate of more than fifty-five miles per hour, contrary to laws and ordinances of city, sufficiently charges offense of violating ordinance adopting provisions of this section [Code 1942, § 8176]. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

Recovery could not be sustained for death of truck driver occurring at night when he drove his truck into an unlighted railroad car on a railroad crossing, where if the decedent had been observing the requirements of this section [Code 1942, § 8176], and of the law with respect to lights on motor vehicles, the accident would not have occurred. Mississippi E. R. Co. v. Summers, 194 Miss. 179, 11 So. 2d 429, 1943 Miss. LEXIS 21 (Miss. 1943).

13.-20. [Reserved for future use.]

21. Under former law.

Ford coupe, equipped with pick-up body and capable of carrying half ton of freight, was "truck" within statute prohibiting driving of truck on highway at speed exceeding thirty miles per hour. Pollard v. Stansell, 169 Miss. 136, 152 So. 646, 1934 Miss. LEXIS 16 (Miss. 1934).

Highway running through unincorporated village, with railroad depot and several buildings, was public highway where territory contiguous thereto is closely built up within statute. Lucedale Auto. Co. v. Daughdrill, 154 Miss. 707, 123 So. 871, 1929 Miss. LEXIS 186 (Miss. 1929).

Ordinance regulating pedestrian's use of the street held reasonable. Snyder v. Campbell, 145 Miss. 287, 110 So. 678, 1926 Miss. LEXIS 33 (Miss. 1926).

OPINIONS OF THE ATTORNEY GENERAL

Where State Highway Commission has acted in response to federal laws, speed limit on county roads is automatically reduced to 55 miles per hour, regardless of whether board of supervisors has passed ordinance or resolution setting limit. Clark, Dec. 9, 1992, A.G. Op. #92-0908.

RESEARCH REFERENCES

ALR.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense. 52 A.L.R.2d 1337.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes. 72 A.L.R.2d 6.

Applicability of res ipsa loquitur where motor vehicle leaves road. 79 A.L.R.2d 6.

Applicability of res ipsa loquitur where motor vehicle turns over on highway. 79 A.L.R.2d 211.

Indefiniteness of automobile speed regulations as affecting validity. 6 A.L.R.3d 1326.

Competency of nonexpert's testimony, based on sound alone, as to speed of motor vehicle involved in accident. 33 A.L.R.3d 1405.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 263 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 760 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 201-210.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 881-887, 887.1 (speed contest), 1341-1524, 1911-1928.

11 Am. Jur. Proof of Facts 1, Speed.

23 Am. Jur. Proof of Facts 709, Turning and Jackknifing of Commercial Vehicles.

CJS.

60 C.J.S., Motor Vehicles §§ 69 et seq.

60A C.J.S., Motor Vehicles §§ 671 et seq.

61A C.J.S., Motor Vehicles §§ 1641 et seq.

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Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-502. Penalties for conviction of driving motor vehicle or motorcycle on street or highway in a race.

(1) For the purposes of this section:

(a) "Motor vehicle" has the meaning ascribed in Section 27-19-3.

(b) "Motorcycle" has the meaning ascribed in Section 27-19-3.

(c) "Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(2) Any person driving a motor vehicle or motorcycle upon a street or highway in a race, upon conviction, shall be punished as follows:

(a) A person convicted for the first offense of violating this subsection shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), imprisoned for not more than forty-eight (48) hours, or both.

(b) For a second conviction of any person violating this subsection, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year, and shall be sentenced to community service work for not less than ten (10) days nor more than one (1) year.

(c)(i) For a third or subsequent conviction of any person violating this subsection, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; however, for any such offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail at the discretion of the circuit court judge.

(ii) After a conviction under this subsection and upon receipt of the court abstract, the Commissioner of Public Safety shall suspend the driver's license and driving privileges of the person for not less than five (5) years.

(3) A conviction and imposition of a sentence under this section does not prevent a conviction and imposition of a sentence under Section 63-7-103.

HISTORY: Laws, 2010, ch. 457, § 2, eff from and after July 1, 2010.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 63-3-503. Modification of maximum speed limits by state highway commission; maximum penalties for violations.

Whenever the state highway commission shall determine upon the basis of an engineering and traffic investigation that any speed set forth in Section 63-3-501 is greater than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, said commission shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of highway.

Whenever the state highway commission determines that speed limits set forth in Section 63-3-501 are different from those speeds set forth in applicable laws of the Federal Government, then said commission may declare a speed limit which is consistent with such laws and which shall be effective immediately upon adoption by the commission. Appropriate signs giving notice of the adopted speed limits shall be erected upon order of the commission.

The maximum fine and sentence to be imposed for a violation of excessive speed above the maximum limits set by the state highway commission pursuant to the authority granted by this section shall be one-half (½) the fine and sentence imposed by Section 63-9-11 if the excessive speed does not exceed the maximum limits imposed by Section 63-3-501.

HISTORY: Codes, 1942, § 8176; Laws, 1938, ch. 200; Laws, 1948, ch. 328, § 1; Laws, 1962, ch. 524; Laws, 1966, ch. 571, § 1; Laws, 1970, ch. 442, § 1; Laws, 1974, ch. 314, eff from and after passage (approved Feb. 28, 1974).

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Violation of this section [Code 1942, § 8176] constitutes misdemeanor and fine of $100 may be imposed therefor, by virtue of Code 1942, § 8275. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

RESEARCH REFERENCES

ALR.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense. 52 A.L.R.2d 1337.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes. 72 A.L.R.2d 6.

Applicability of res ipsa loquitur where motor vehicle leaves road. 79 A.L.R.2d 6.

Applicability of res ipsa loquitur where motor vehicle turns over on highway. 79 A.L.R.2d 211.

Indefiniteness of automobile speed regulations as affecting validity. 6 A.L.R.3d 1326.

Competency of nonexpert's testimony, based on sound alone, as to speed of motor vehicle involved in accident. 33 A.L.R.3d 1405.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 265.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 887.1 (speed contest).

11 Am. Jur. Proof of Facts 1, Speed.

23 Am. Jur. Proof of Facts 709, Turning and Jackknifing of Commercial Vehicles.

CJS.

60 C.J.S., Motor Vehicles §§ 69 et seq.

60A C.J.S., Motor Vehicles §§ 671 et seq.

61A C.J.S., Motor Vehicles §§ 1641 et seq.

§ 63-3-505. Conditions under which speed must be decreased.

The driver or operator of any motor vehicle must decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic. All trucks, or truck-trailer combinations and passenger buses shall be required to reduce speed to forty-five miles per hour during inclement weather when visibility is bad.

HISTORY: Codes, 1942, § 8176; Laws, 1938, ch. 200; Laws, 1948, ch. 328, § 1; Laws, 1962, ch. 524; Laws, 1966, ch. 571, § 1; Laws, 1970, ch. 442, § 1 eff from and after passage (approved April 1, 1970).

Cross References — Powers and duties of the Mississippi Transportation Commission, generally, see § 65-1-8.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Criminal sanctions.
3. Jury instructions.
4. Jury issues.
5. Directed verdict.
6. Miscellaneous.

1. In general.

Truck driver was not at fault in an auto accident when a motorist who was passing the truck struck an oncoming vehicle on a highway because the truck driver was not required to slow down to let the motorist pass the truck driver. Even assuming that the accident created a special hazard, the truck driver's failure to slow down after the accident occurred in no way caused or contributed to the accident or exhibited negligence by the truck driver. Owens v. Brooks, 321 So. 3d 1202, 2021 Miss. App. LEXIS 24 (Miss. Ct. App.), cert. denied, 322 So. 3d 1290, 2021 Miss. LEXIS 202 (Miss. 2021).

Mother was required under Miss. Code Ann. § 63-3-505 to decrease the speed of her vehicle when she approached the intersection; the mother failed to keep a proper lookout as she approached the intersection, where a reasonable person would have recognized the need to slow the vehicle down when approaching the intersection. Clark v. Clark, 863 So. 2d 1027, 2004 Miss. App. LEXIS 38 (Miss. Ct. App. 2004).

In an action arising from an accident at an intersection between a bus with the right-of-way and an automobile which failed to stop at a stop sign, the statute was properly applied to require the bus driver to slow down as he approached the intersection and to brake when it became apparent that the automobile was not going to stop. Greyhound Lines, Inc. v. Sutton, 765 So. 2d 1269, 2000 Miss. LEXIS 202 (Miss. 2000).

A truckdriver, in the exercise of ordinary and reasonable care, should have reduced the speed of his truck so as to enable him to keep his truck under control and avoid striking the decedent when decedent came within the range of truck's headlights; the fact that the decedent was at or near the center of the road, under the influence of intoxicating liquor and a black man dressed in black clothing does not in and of itself absolve the truckdriver of his liability. Hornburger v. Baird, 508 F. Supp. 84, 1980 U.S. Dist. LEXIS 16076 (N.D. Miss. 1980).

A motorist driving approximately 85 miles per hour who failed to reduce his speed while approaching an intersection was liable for injuries sustained by a passenger during a collision where the motorist's speed was a proximate contributing cause of the collision. Youngblood v. Monteith, 340 So. 2d 4, 1976 Miss. LEXIS 1702 (Miss. 1976).

Notwithstanding that it was raining hard on the morning of an accident, neither the owner nor the operator of a tractor-semi-trailer were guilty of negligence per se for failing to reduce speed from 50 to 45 miles per hour, where the operator testified that visibility was approximately one-quarter of a mile, and other witnesses for the plaintiff testified to the fact that it was raining but that they had no trouble seeing the highway and automobiles in front of them. Harpole v. Harrison, 279 So. 2d 150, 1973 Miss. LEXIS 1458 (Miss. 1973).

Motorist who, in violation of ¶ 2 of subd (b) of Code 1942, § 8185, attempted to pass another car on the left within 100 feet of a dangerous intersection, and at the same time failed to decrease his speed as required by this section [Code 1942, § 8176] was guilty of negligence which proximately caused the collision at the intersection. McCorkle v. United Gas Pipe Line Co., 253 Miss. 169, 175 So. 2d 480, 1965 Miss. LEXIS 979 (Miss. 1965).

Motorist approaching and entering intersection at unabated speed of approximately 30 miles per hour is prima facie negligent. Moore v. Abdalla, 197 Miss. 125, 19 So. 2d 502, 1944 Miss. LEXIS 281 (Miss. 1944).

2. Criminal sanctions.

Violation of this section [Code 1942, § 8176] constitutes misdemeanor and fine of $100 may be imposed therefor, by virtue of Code 1942, § 8275. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

3. Jury instructions.

In a suit brought by a widow against a company, alleging that her decedent was struck and killed by a truck negligently driven by one of the company's employees, the trial court did not err in refusing a peremptory instruction, to the effect that the employee was negligent in failing to decrease his speed as he approached the intersection where the decedent's vehicle was, as, pursuant to Miss. Code Ann. § 63-3-505 (Rev. 2004), the employee, who was already traveling 10 to 25 miles per hour below the speed limit, was not required to reduce his speed further upon approaching the intersection. Martin v. B&B Concrete Co., 71 So. 3d 611, 2011 Miss. App. LEXIS 210 (Miss. Ct. App.), cert. denied, 71 So. 3d 1207, 2011 Miss. LEXIS 487 (Miss. 2011).

Where a driver turned left in front of another vehicle, causing an accident, there was no error in the trial court's refusal to give a special hazard instruction, as there were no stalled or wrecked vehicles obstructing the highway, no emergency vehicles, and no emergency lights; the Supreme Court of Mississippi has never held, and Miss. Code Ann. § 63-3-505 did not provide, that a momentarily inattentive driver was a special hazard for which another driver had to reduce speed. Entergy Miss., Inc. v. Bolden, 854 So. 2d 1051, 2003 Miss. LEXIS 473 (Miss. 2003).

In an action arising from a one-car accident that occurred when the 16-year-old driver lost control of her car when she hit some loose asphalt or gravel as she entered a curve, the court did not err in refusing to instruct the jury either that it was their sworn duty to return a verdict for the plaintiff or that the defendant was guilty of negligence in the operation of her motor vehicle as a matter of law where (1) the defendant estimated her speed at around 35 to 40 mph, but contended that she did not believe she was speeding, and (2) her response to the question of whether she slowed down before entering the curve was, "I do not recall applying my brakes before I entered the curve," but slowing down can also be accomplished by letting off the gas, as opposed to braking. Jones v. United States Fid. & Guar. Co., 2001 Miss. App. LEXIS 86 (Miss. Ct. App. Feb. 27, 2001), aff'd, 822 So. 2d 946, 2002 Miss. LEXIS 224 (Miss. 2002).

The court properly instructed the jury that it was the duty of the plaintiff to reduce her speed when approaching and going around a curve and that if the jury believed from the evidence that the plaintiff failed to reduce the speed of her automobile on approaching and going around a curve and, in the exercise of reasonable care, she should have reduced her speed while traveling on a wet highway, then she was guilty of negligence. Fielder v. Magnolia Bev. Co., 757 So. 2d 925, 1999 Miss. LEXIS 165 (Miss. 1999).

A jury instruction in a negligence action arising from an automobile accident that required the defendant to "decrease her speed as may be necessary to avoid colliding with any person, vehicle, or other conveyance on the highway in compliance with legal requirements" was erroneous because it placed a higher burden on the defendant than that of reasonable care. Similarly, an instruction that required the defendant to be "vigilant and to anticipate the presence of vehicles at all times and under all circumstances" was erroneous for the same reason, and also warranted reversal and remand of the case. Turner v. Turner, 524 So. 2d 942, 1988 Miss. LEXIS 201 (Miss. 1988).

In a suit for the death of a child pedestrian struck by an automobile, the plaintiff was not entitled to an instruction that the driver of the automobile was guilty of negligence as a matter of law by reason of the driver's alleged failure to decrease the speed of his automobile as he approached the intersection, where the evidence as to the automobile's speed was in conflict. Young v. Schwarz, 230 So. 2d 583, 1970 Miss. LEXIS 1560 (Miss. 1970).

The admission of a defendant motorist involved in an intersectional accident that she failed to reduce her speed on approaching the intersection would only entitle the plaintiff to an instruction that the defendant's failure to reduce her speed was negligence and that if such negligence caused or contributed to the accident then he was entitled to a verdict against her. Richardson v. Adams, 223 So. 2d 536, 1969 Miss. LEXIS 1275 (Miss. 1969).

4. Jury issues.

In a motorist's suit to recover damages for personal injuries he sustained in a car accident with a construction worker, the construction company and the worker's motions for summary judgment were denied because even though it was undisputed that the motorist did not slow down when he approached the intersection at which the accident occurred, thereby violating Miss. Code Ann. § 63-3-505, whether this was negligence per se was for a jury to decide. Moran v. Callahan, 2007 U.S. Dist. LEXIS 94573 (S.D. Miss. Dec. 11, 2007).

In order to be in violation of this section [Code 1942, § 8176] a motorist must fail to reduce his speed from a maximum provided when one of the conditions set out in this section is present, and the question of whether the plaintiff motorist involved in an intersectional accident when travelling at a speed less than the maximum failed further to reduce his speed under the prevailing circumstances constituted negligence was one for the jury to determine. Richardson v. Adams, 223 So. 2d 536, 1969 Miss. LEXIS 1275 (Miss. 1969).

Evidence that motorist approached intersection without reducing speed in violation of this section [Code 1942, § 8176] was sufficient to submit to the jury the question of whether he was guilty of any negligence which proximately caused or contributed to the accident. Shaw v. Phillips, 193 So. 2d 717, 1967 Miss. LEXIS 1559 (Miss. 1967).

5. Directed verdict.

The admission by a motorist involved in an intersectional accident that she failed to decrease her speed upon approaching the intersection is not sufficient ground to support a directed verdict for the plaintiff on the basis of the contention that the defendant motorist was in violation of this section [Code 1942, § 8176] and therefore negligent as a matter of law. Richardson v. Adams, 223 So. 2d 536, 1969 Miss. LEXIS 1275 (Miss. 1969).

6. Miscellaneous.

The trial court did not err in finding in favor of a driver in her action against a city and a police officer stemming from a vehicular accident in which the driver was struck by the officer, because the city's argument that the driver was contributorily negligent under Miss. Code Ann. §§ 63-3-805 and 63-3-505 contained no evidentiary basis. The driver's view was blocked by a truck and therefore, she was unable to see the officer approach; the driver had a green light at the intersection and she was not speeding or violating any other rule of the road. City of Jackson v. Presley, 40 So. 3d 578, 2009 Miss. App. LEXIS 793 (Miss. Ct. App. 2009), rev'd, 40 So. 3d 520, 2010 Miss. LEXIS 385 (Miss. 2010).

In an action for injury sustained when plaintiff's coal truck struck defendant's pick-up truck which was making a left turn in front of plaintiff's vehicle to enter an intersecting county road, even if plaintiff was contributorily negligent in driving at an excessive speed while visibility was poor, and failing to blow his horn, and in failing to slow down as he approached the intersection, under Code 1942, § 1454, he was not barred from recovery, although the amount of damages which he might otherwise have been entitled to recover would be diminished in proportion to the amount of negligence, if any, attributable to him. Cobb v. Williams, 228 Miss. 807, 90 So. 2d 17, 1956 Miss. LEXIS 568 (Miss. 1956).

Duty of drivers of motor vehicles in approaching curves defined. Flynt v. Fondren, 122 Miss. 248, 84 So. 188, 1920 Miss. LEXIS 433 (Miss. 1920).

RESEARCH REFERENCES

ALR.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense. 52 A.L.R.2d 1337.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes. 72 A.L.R.2d 6.

Applicability of res ipsa loquitur where motor vehicle leaves road. 79 A.L.R.2d 6.

Applicability of res ipsa loquitur where motor vehicle turns over on highway. 79 A.L.R.2d 211.

Indefiniteness of automobile speed regulations as affecting validity. 6 A.L.R.3d 1326.

Competency of nonexpert's testimony, based on sound alone, as to speed of motor vehicle involved in accident. 33 A.L.R.3d 1405.

Am. Jur.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 201-210.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 881-887, 1341-1524, 1911-1928.

11 Am. Jur. Proof of Facts 1, Speed.

23 Am. Jur. Proof of Facts 709, Turning and Jackknifing of Commercial Vehicles.

5 Am. Jur. Proof of Facts 3d 191, Meteorological Conditions at a Particular Time and Place.

CJS.

60A C.J.S., Motor Vehicles § 675.

§ 63-3-507. Details of complaint and summons or notice to appear alleging speeding violation.

In every charge of violation of Sections 63-3-501 through 63-3-505, and subsection (2) of Section 63-3-509 the complaint as well as the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven as well as the speed applicable within the district or at the location.

HISTORY: Codes, 1942, § 8176; Laws, 1938, ch. 200; Laws, 1948, ch. 328, § 1; Laws, 1962, ch. 524; Laws, 1966, ch. 571, § 1; Laws, 1970, ch. 442, § 1, eff from and after passage (approved April 1, 1970).

Cross References — Uniform Highway Traffic Regulation Law – Traffic Violations Procedure, see Chapter 9 of this title.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence.

1. In general.

Defendant could not complain of conviction for violating city ordinance adopting provisions of Code 1942, § 8176, on ground that the summons or notice to appear and defend contained no specification of speed at which defendant was charged to have driven, where defendant appeared and defended without making such point in the trial court. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

2. Evidence.

Error in personal injury case in admitting evidence of a municipal speed ordinance because it was not pleaded in the declaration could not be complained of where the pertinent provision of the ordinance as to the applicable speed limit was identical with that of Code 1942, § 8176, and it was alleged in the declaration that defendant was running at a reckless speed in violation of the law. Howell v. George, 201 Miss. 783, 30 So. 2d 603, 1947 Miss. LEXIS 446 (Miss. 1947).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 63-3-507 requires that speed alleged to have been traveled needs to be on ticket. Thomas, June 10, 1993, A.G. Op. #93-0267.

Miss. Code Section 63-3-507 deals specifically with speeding; although helpful, it is not mandated that exact speed be alleged when driving in excess of speed limit is part of reckless driving charge. Thomas, June 10, 1993, A.G. Op. #93-0267.

RESEARCH REFERENCES

CJS.

61A C.J.S., Motor Vehicles § 1649.

§ 63-3-509. Minimum speed limits.

(1) No motor vehicle shall be driven at a speed less than thirty miles per hour on federal designated highways where no hazard exists. An exception to this requirement shall be recognized when reduced speed is necessary for safe operation, or when a vehicle or combination of vehicles is necessarily, or in compliance with law or police direction, proceeding at a reduced speed.

Police officers are hereby authorized to enforce this provision by directions to drivers. In the event of apparent wilful disobedience to this provision and refusal to comply with the direction of an officer in accordance herewith the continued slow operation by a driver shall be a misdemeanor.

(2) In the event a speed limit of seventy miles per hour is established on any portion of the Interstate Highway System or on four-laned U.S. designated highways as is provided in Section 63-3-501, a minimum speed of forty miles per hour shall be established for those vehicles having a maximum speed

restriction of seventy miles per hour. Notice of said minimum speed shall be posted on such roads.

HISTORY: Codes, 1942, §§ 8176, 8178; Laws, 1938, ch. 200; Laws, 1948, ch. 328, §§ 1, 3; Laws, 1962, ch. 524; Laws, 1966, ch. 571, § 1; Laws, 1970, ch. 442, § 1, eff from and after passage (approved April 1, 1970).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-10. [Reserved for future use.]
11. Under former law.

1. In general.

In an action for personal injuries and property damages resulting when plaintiff's automobile ran into defendant's truck which was going in the same direction on a U. S. highway, where it appeared that the speed of defendant's truck at the time of the accident was from 10 to 20 miles per hour, the trial court committed reversible error in failing to charge that the jury should find for plaintiff if the defendant was driving his vehicle on a federal designated highway at the time and place of the accident at a speed of less than 30 miles per hour where no fact existed justifying such slow speed under this section [Code 1942, § 8178], and the reduced speed was the proximate, or a contributory cause of the accident. Netterville v. Crawford, 233 Miss. 562, 103 So. 2d 1, 1958 Miss. LEXIS 418 (Miss. 1958).

2.-10. [Reserved for future use.]

11. Under former law.

Truckdriver traveling less than 30 miles per hour on highway is not negligent if reduced speed is out of necessity; physical limitation on rate of acceleration of tractor trailer which is traveling at reduced speed due to just having entered highway falls within "necessary" exception to minimum speed. Byrd v. F-S Prestress, 464 So. 2d 63, 1985 Miss. LEXIS 1899 (Miss. 1985).

Operation of motor vehicle at less than fixed maximum rate of speed may be negligence. Wheat v. Teche Lines, Inc., 181 Miss. 408, 179 So. 553, 1938 Miss. LEXIS 83 (Miss. 1938).

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Department of Transportation has the duty to post signs indicating the minimum speed limit on any portion of the Interstate Highway System or on four-laned U.S. designated highways wherein the Mississippi Transportation Commission has established the maximum speed limit to be 70 miles per hour. Brown, Apr. 16, 2004, A.G. Op. 04-0162.

RESEARCH REFERENCES

ALR.

Indefiniteness of automobile speed regulations as affecting validity. 6 A.L.R.3d 1326.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 263 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 766.

CJS.

60 C.J.S., Motor Vehicles §§ 69 et seq.
60A C.J.S., Motor Vehicles § 674.
61A C.J.S., Motor Vehicles § 1641.

§ 63-3-511. Modification of speed limits by local authorities; establishment of speed limits upon roads of correctional facilities; modification of local limits to conform to lower limits established by state highway commission.

Whenever local authorities, including boards of supervisors, within their respective jurisdictions, determine upon the basis of an engineering and traffic investigation that the speed permitted under this article on any street, or any county road or any portion thereof, or at any intersection is greater than is reasonable or safe under conditions found to exist upon such street, or any county road or any portion thereof, or at such intersection, such local authorities shall determine and declare, by ordinance, a reasonable and safe speed limit, which shall be effective when appropriate signs giving notice thereof are erected on such street, or any county road or any portion thereof, or at such intersection, or upon the approaches thereto. However, no speed limit shall be fixed by any such local authorities at less than fifteen (15) miles per hour.

The Commissioner of Corrections is authorized to establish by regulation reasonable and safe speed limits upon the roads of the correctional facilities under his jurisdiction which shall be effective when appropriate signs giving notice thereof are erected. Speed limits may be based upon road or traffic conditions or upon security considerations.

Provided, however, that whenever the State Highway Commission shall, pursuant to Section 63-3-503, lower the maximum speed limit in response to federal laws, regulations or guidelines for purposes of energy conservation, local authorities, including boards of supervisors, shall immediately lower maximum speed limits on local highways, not to exceed a maximum speed of fifty-five (55) miles per hour.

HISTORY: Codes, 1942, § 8177; Laws, 1938, ch. 200; Laws, 1948, ch. 328, § 2; Laws, 1956, ch. 397; Laws, 1960, ch. 208; Laws, 1974, ch. 321; Laws, 1986, ch. 485, § 2, eff from and after passage (approved April 15, 1986).

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — Provision that speed limits within the grounds of correctional facilities may be enforced by employees of the Department of Corrections by citation or otherwise, see § 47-5-54.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Burden of proof.
3.-10. [Reserved for future use.]
11. Under former law.

1. In general.

In cases involving injuries arising out of vehicular traffic on municipal streets or county roads where special municipal or county speed restrictions have been placed in effect, the party expecting to rely upon a violation of such restrictions should plead the existence of the special speed limit established by local authority, and its violation. Niles v. Sanders, 218 So. 2d 428, 1969 Miss. LEXIS 1599 (Miss. 1969).

2. Burden of proof.

If the existence of a special county or municipal speed restriction is alleged and denied, or if its legality is put in issue by a responsive pleading, proof should then be required, the burden resting upon the party having the affirmative, as in other cases of disputed fact; but where the existence of the speed zone and rate of speed are properly alleged and not denied, proof that speed signs were in fact posted is sufficient to create a presumption that they reflect appropriate action by competent authority in restricting speeds. Niles v. Sanders, 218 So. 2d 428, 1969 Miss. LEXIS 1599 (Miss. 1969).

3.-10. [Reserved for future use.]

11. Under former law.

In action for injuries sustained in collision alleged to have resulted from defendant's negligence in driving truck in excess of thirty miles per hour on left side of highway through municipality, in absence of showing city ordinance limiting speed of motor vehicles within its limits, statutes limiting maximum speed of thirty miles per hour would apply. McDonough Motor Express v. Spiers, 180 Miss. 88, 177 So. 655 (Miss. 1937).

City ordinance, fixing automobile speed limit outside business district, not statute fixing lower limit on highways in closely built-up territory, controls speed in city outside such district. Robinson v. Haydel, 177 Miss. 233, 171 So. 7, 1936 Miss. LEXIS 266 (Miss. 1936).

Former statute, since repealed [Code 1930, § 5569] delegated, with certain limitations, to governing authorities of municipalities power to fix their own traffic rules within corporate limits within bounds fixed. Meridian Coca-Cola Co. v. Watson, 161 Miss. 108, 134 So. 824, 1931 Miss. LEXIS 246 (Miss. 1931).

Where city had regulated traffic within its limits, state regulation of eight miles an hour in passing pedestrians held inapplicable. Meridian Coca-Cola Co. v. Watson, 161 Miss. 108, 134 So. 824, 1931 Miss. LEXIS 246 (Miss. 1931).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 264, 266.

CJS.

60 C.J.S., Motor Vehicles §§ 71-73.

§ 63-3-513. Special speed limitation on bridges and elevated structures; proof of violations.

The state highway commission upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this article, the commission shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet before each end of such structure.

No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

Upon the trial of any person, charged with a violation of this section, proof of said determination of the maximum speed by said commission and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

HISTORY: Codes, 1942, § 8179; Laws, 1938, ch. 200.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

RESEARCH REFERENCES

Am. Jur.
3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 881-887, 1341-1524, 1911-1928.
11 Am. Jur. Proof of Facts 1, Speed.

§ 63-3-515. Speed limits near schools and churches, upon levees and causeways, and in other designated special zones.

The boards of supervisors of counties and the governing authorities of municipalities are hereby authorized to adopt by order or resolution and to enforce within their respective territorial boundaries the maximum legal rate of speed at which a motor vehicle may be run or operated along any public street, road, highway (except state-maintained highways), or portion thereof in the vicinity of schools and churches, upon levees and causeways and in other special zones which the board or governing authorities may designate. The rate of speed so established shall be determined upon the basis of an engineering and traffic study. The order or resolution setting such speed limits may provide that such limits are only effective during specified times of the day, days of the week and months of the year.

HISTORY: Codes, Hemingway's 1917, § 5776; 1930, § 5570; 1942, § 8060; Laws, 1916, ch. 116; Laws, 1986, ch. 353, eff from and after July 1, 1986.

JUDICIAL DECISIONS

1. In general.
The statute prohibiting drivers from passing a school during regular school hours faster than ten miles per hour was not repealed by implication by a subsequent statute prohibiting a motorist from driving faster than is reasonable and prudent under the circumstances where the two statutes could be harmonized and expressed a clear legislative intent. Brown v. McCoy, 362 So. 2d 186, 1978 Miss. LEXIS 2080 (Miss. 1978).

RESEARCH REFERENCES

ALR.

Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles. 50 A.L.R.2d 343.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 276-278.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 881-887, 1341-1524, 1911-1928.

11 Am. Jur. Proof of Facts 1, Speed.

§ 63-3-516. Speed limits within highway work zones; penalties for violations.

(1) It is unlawful for any person to operate a motor vehicle within a highway work zone at a speed in excess of the maximum speed limit specifically established for the zone whenever workers are present and whenever the zone is indicated by appropriately placed signs displaying the reduced maximum speed limit. Any person violating the provisions of this section shall be punished, upon conviction, for a first offense by a fine of not more than Two Hundred Fifty Dollars ($250.00); and for second, third and subsequent offenses by a fine of double the maximum fine imposed for second, third or subsequent offenses under Section 63-9-11.

(2) For the purposes of this section the term "highway work zone" means a construction or maintenance area that is located on or along any public highway, road or street within this state that is marked:

(a) By appropriate warning signs or other traffic control devices indicating that work is in progress; and

(b) By signs of a design approved by the Department of Transportation indicating that any person who operates a motor vehicle within a highway work zone at a speed in excess of the reduced maximum speed limit may be punished by a fine of double the maximum amount otherwise authorized by law.

(3) Nothing in this section shall preclude the prosecution or conviction for careless or reckless driving of any motor vehicle operator whose operation of a motor vehicle in a highway work zone, apart from speed, demonstrates the operation of the same in a careless or imprudent manner in violation of Section 63-3-1213 or in a reckless manner in violation of Section 63-3-1201.

(4) Every person who operates any motor vehicle in violation of the provisions of this section and who causes property damage to road construction equipment or a motor vehicle in an amount of Five Hundred Dollars ($500.00) or greater within a highway work zone shall, upon conviction, be guilty of a separate misdemeanor and shall be punished by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term of not less than thirty (30) days nor more than one (1) year, or by both such fine and imprisonment, in the discretion of the court, and the court shall, as a condition

of any sentence imposed determine the extent of the property damage caused by the violator and require the violator to make restitution to the injured party upon such terms and conditions determined by the court. Nothing herein however shall prevent the injured party from pursuing any other civil remedies against the violators as allowed by law.

(5) Every person who operates any motor vehicle in violation of the provisions of this section and who causes the death of another within a highway work zone or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another within a highway work zone shall, upon conviction, be guilty of a separate felony for each victim who suffers death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than three (3) years and not to exceed fifteen (15) years for each death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction.

HISTORY: Laws, 1997, ch. 326, § 1; Laws, 2004, ch. 324, § 1, eff from and after July 1, 2004; Laws, 2019, ch. 356, § 2, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in this section by deleting the paragraph designator "a" following the subsection (4) and (5) designators. Section 2 of Chapter 356, Laws of 2019, amended this section by adding paragraphs designated (a) in subsections (4) and (5) but did not add any other designated paragraphs in the subsections. The Joint Committee ratified the correction at its August 12, 2019, meeting.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Controlling Statute.

1. In general.

Although there was no violation of § 63-3-516 when the defendant drove 67 miles per hour in a construction zone which was posted at 60 miles per hour because it was nighttime and no workers were present, there was a violation of § 63-3-313 as he did not obey an official traffic-control device. Harrison v. State, 2000 Miss. App. LEXIS 44 (Miss. Ct. App. Feb. 8, 2000), aff'd, 800 So. 2d 1134, 2001 Miss. LEXIS 223 (Miss. 2001).

Although there was no violation of § 63-3-516 when the defendant drove 67 miles per hour in a construction zone which was posted at 60 miles per hour because it was nighttime and no workers were present, there was a violation of § 65-1-71 as he did not obey a sign that was erected to control the use of the road during construction. Harrison v. State, 2000 Miss. App. LEXIS 44 (Miss. Ct. App. Feb. 8, 2000), aff'd, 800 So. 2d 1134, 2001 Miss. LEXIS 223 (Miss. 2001).

Although there was no violation of § 63-3-516 when the defendant drove 67 miles per hour in a construction zone which was posted at 60 miles per hour because it was nighttime and no workers were present, there was a violation of § 65-1-8, which allows the Transportation Commission to adopt rules, regulations and ordinances for the control of and the policing of the traffic on the state highways. Harrison v. State, 2000 Miss. App. LEXIS 44 (Miss. Ct. App. Feb. 8, 2000), aff'd, 800 So. 2d 1134, 2001 Miss. LEXIS 223 (Miss. 2001).

2. Controlling Statute.

Specific provision of Miss. Code Ann. § 63-3-516 prevails over the general speeding statutes. Harrison v. State, 800 So. 2d 1134, 2001 Miss. LEXIS 223 (Miss. 2001).

§ 63-3-517. Applicability of speed restrictions to emergency vehicles; duties of drivers of emergency vehicles.

The speed limitations set forth in this article shall not apply to authorized emergency vehicles when responding to emergency calls and the drivers thereof sound audible signal by bell, siren, or exhaust whistle. This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street, nor shall it protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others.

HISTORY: Codes, 1942, § 8180; Laws, 1938, ch. 200; Laws, 1948, ch. 328, § 4.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Law enforcement immunity.

1. In general.

In an action arising out of a collision between an automobile driven by a constable in pursuit of a reckless driver and one operated by plaintiff, where the evidence was in conflict as to such matters as to whether the siren on constable's car was sounded, speed, and position of vehicles at time of accident, the issue was properly submitted to a jury. Johnson v. Richardson, 234 Miss. 849, 108 So. 2d 194, 1959 Miss. LEXIS 559 (Miss. 1959).

2. Law enforcement immunity.

Police officer's decision to answer a burglary call without lights or sirens was not a discretionary decision entitling him and his employer to immunity under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 through 11-46-23, because the officer had no element of choice or judgment in how to respond to an emergency dispatch, pursuant to the terms of Miss. Code Ann. § 63-3-517. City of Jackson v. Lipsey, 834 So. 2d 687, 2003 Miss. LEXIS 8 (Miss. 2003).

Directed verdict in favor of the sheriff and county in the family's action alleging reckless disregard by an auxiliary deputy sheriff concerning an accident involving the deputy and their son was appropriate under Miss. Code Ann. § 11-46-9(1)(c) because the deputy's actions, at the most, amounted to negligence; the deputy was traveling no more than five miles over the speed limit and Miss. Code Ann. § 63-3-517 permitted him to do so because he was responding to an accident. Peebles v. Winston County, 929 So. 2d 385, 2006 Miss. App. LEXIS 373 (Miss. Ct. App. 2006).

OPINIONS OF THE ATTORNEY GENERAL

Municipal law enforcement officers of a municipality with a population of 2,000 or more may operate radar speed-detection equipment upon a state-designated highway projecting through its corporate limits as well as on other public streets; however, officers of a municipality having a population of less than 15,000 cannot lawfully operate such equipment on any federally designated highway within the corporate limits of the municipality; this is true even if the federally designated highway is also designated a city street. Levingston, Feb. 18, 2000, A.G. Op. #2000-0062.

RESEARCH REFERENCES

ALR.

Liability of governmental unit or its officers for injury to innocent occupant of moving vehicle, or for damages to such vehicle, as result of police chase. 4 A.L.R.4th 865.

Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 945, 946.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 591-601, 881-887, 1341-1524, 1911-1928.

10 Am. Jur. Proof of Facts 3d 203, Negligent Operation of Emergency Vehicle.

§ 63-3-519. Use of radar speed detection equipment; authorization and limitations; notification of road blockages or emergencies on certain federally designated limited-access highways.

It shall be unlawful for any person or peace officer or law enforcement agency, except the Mississippi Highway Safety Patrol, to purchase or use or allow to be used any type of radar speed detection equipment upon any public street, road or highway of this state. However, such equipment may be used:

(a) By municipal law enforcement officers within a municipality having a population of two thousand (2,000) or more according to the latest or a previous federal census upon the public streets of the municipality, but in no case where the latest federal census population for the municipality is less than one thousand five hundred (1,500);

(b) By any college or university campus police force within the confines of any campus wherein more than two thousand (2,000) students are enrolled;

(c) By municipal law enforcement officers in any municipality having a population in excess of fifteen thousand (15,000) according to the latest federal census on federally designated highways lying within the corporate limits.

The Mississippi Highway Safety Patrol shall be immediately notified by municipal law enforcement of any road blockages or emergencies occurring on any federally designated limited-access highways lying within the corporate limits.

HISTORY: Codes, 1942, § 8176.5; Laws, 1966, ch. 383, §§ 1, 2; Laws, 1968, ch. 542, § 1, eff from and after passage (approved May 15, 1968); Laws, 2021, ch. 373, § 1, eff from and after July 1, 2021; Laws, 2022, ch. 307, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2021 amendment redesignated former 1 trough 3 as (a) through (c); and rewrote the last paragraph, which read: "The Mississippi Highway Safety Patrol will not set up radar on highways within municipalities with a population in excess of fifteen thousand

(15,000) according to the latest federal census."

The 2022 amendment, in (a), inserted "according to the latest or a previous federal census" and added "but in no case where the latest federal census population for the municipality is less than one thousand five hundred (1,500)" at the end.

JUDICIAL DECISIONS

1. In general.

The court would reject the contention that a state highway running through a municipality is not a "public street" within the meaning of the exception stated in subparagraph (1). Moore v. City of Louisville, 716 So. 2d 1136, 1998 Miss. App. LEXIS 513 (Miss. Ct. App. 1998).

OPINIONS OF THE ATTORNEY GENERAL

The federal census requirement applies to the provisions of Section 63-3-519(1). Rogers, April 10, 1991, [no A.G. opinion number in the original], 1991 Miss. AG LEXIS 323; opinion withdrawn as to application of federal census requirement in 63-3-519 to municipalities with population of 2,000 or more by Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

Pursuant to Miss. Code Ann. § 65-7-95, a municipality having a population of 2,000 or more may purchase and operate radar on its public streets. The most authentic proof of population is the census, but the municipality may use another official count. Any speeding conviction resulting from radar evidence would have to be based on both proof of the offense and proof of the town's population. Adams, June 13, 1974, [no A.G. opinion number in original] 1974 Miss. AG LEXIS 8.

In order to come within the exception to the rule that only the Mississippi Highway Safety Patrol can use radar speed detection equipment, a municipality must have, according to the latest federal census, a population of 2,000 or more. Hickman, June 24, 1992, A.G. Op. #92-0441, 1992 Miss. AG LEXIS 339; opinion withdrawn as to application of federal census requirement in 63-3-519 to municipalities with population of 2,000 or more by Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

Intent of Miss. Code Section 63-3-519 is to prohibit use of all devices for detection of speed of automobiles, not just those which use emission of electronic waves; system of using table to calculate speed of car, which is timed between two points falls, within statutory prohibition of use of radar speed-detection equipment. Ewing, Feb. 10, 1993, A.G. Op. #93-0002.

Municipality with population of over 2,000 but under 15,000 may use radar on state highways within municipal corporate limits. Gentry, Feb. 16, 1994, A.G. Op. #94-0067.

VASCAR, time and motion device, is within prohibition of radar speed detection equipment in Section 63-3-519; intent of statute is to prohibit use of all devices for detection of speed of automobiles, not just those which use emission of electronic waves. Chism, March 9, 1994, A.G. Op. #94-0013.

Laser speed detection device falls within prohibition of radar speed detection equipment in Section 63-3-519. Schwing, March 31, 1994, A.G. Op. #94-0176.

The only census that can be used to establish the minimum population necessary for the use of radar is the latest federal census. Shows, April 20, 1994, A.G. Op. # 94-0160, 1994 Miss. AG LEXIS 235; opinion withdrawn as to application of federal census requirement in 63-3-519 to municipalities with population of 2,000 or more by Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

This section requires a municipality to have a population of two thousand or more according to the latest federal census in order to operate radar upon the public streets of the municipality. Davis, July 19, 1996, A.G. Op. #96-0473, 1996 Miss. AG LEXIS 324; opinion withdrawn as to application of federal census requirement in 63-3-519 to municipalities with population of 2,000 or more by Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

A town may not use electronic timing devices to calculate the speed of an automobile since the statute prohibits the use of all devices for the detection of the speed of automobiles except for the use of radar as limited by statute. Moore, August 10, 1998, A.G. Op. #98-0461.

Since the statute only allows the Mississippi Highway Safety Patrol to use radar speed detection equipment on federally designated highways located within the corporate limits of a municipality having a population of 15,000 or less according to the latest federal census, a city could not use a radar-based traffic monitoring device on federally designated highways within the corporate limits, although it could be used on other public streets of the municipality. Johnson, November 6, 1998, A.G. Op. #98-0688 (superseded by Payne, Jan. 18, 2000, A.G. op. #99-0709).

Municipal law enforcement officers of a municipality with a population of 2,000 or more may operate radar speed detection equipment upon a state designated highway, however, such officers of a municipality having a population of less than 15,000 cannot lawfully operate such equipment on any federally designated highway. Scruggs, December 11, 1998, A.G. Op. #98-0752.

The legislative intent of the statute does not prohibit the purchase and use of a radar-based device that will be used for driver safety awareness and not for enforcement purposes. Payne, Jr., Jan. 18, 2000, A.G. Op. #1999-0709.

A city is entitled to use radar speed detection equipment on any portion of a federally designated highway lying within its corporate limits which is removed from the state maintained system and, if the population of the city exceeds 15,000, radar may be used regardless of whether the street is a public street of the municipality. Lawrence, Apr. 13, 2001, A.G. Op. #01-0164.

A radar unit can be located on private property, including church and bank parking lots, as long as the vehicle being timed is located on a public street, and the radar unit can be operated safely and accurately. The private property owner may allow or disallow such use of its property. Russell, Jan. 14, 2005, A.G. Op. 04-0642.

City police department cannot use radar speed detection equipment on a federal within the corporate limits of the city. Fazente, May 13, 2005, A.G. Op. 05-0231.

In order to operate radar, a municipality must have a population of 2,000 according to the latest federal census. May, Oct. 7, 2005, A.G. Op. 05-0465, 2005 Miss. AG LEXIS 254; opinion withdrawn as to application of federal census requirement in 63-3-519(3) to municipalities with population of 2,000 or more by Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

The use of all devices for the detection of the speed of automobiles is prohibited under the terms of Section 63-3-519 and this would include VASCAR. Magee, Oct. 21, 2005, A.G. Op. 05-0496.

The legislature clearly intended municipal radar on a highway designated both federal and state to be used only in municipalities of a population of 15,000 or more. Walker, Apr. 28, 2006, A.G. Op. 06-0137.

There is no reason in the law to imply that the census requirement found in 63-3-519(3) applies to 63-3-519(1). A town my use some other official population count to prove its current population. Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

RESEARCH REFERENCES

ALR.

Proof, by radar or other mechanical or electronic devices, of violation of speed regulations. 47 A.L.R.3d 822.

Possession or operation of device for detecting or avoiding traffic radar as criminal offense. 17 A.L.R.4th 1334.

Am. Jur.
11 Am. Jur. Proof of Facts 1, Speed.

§ 63-3-521. Use of radar speed detection equipment; penalties for violations.

Any person who violates section 63-3-519 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

HISTORY: Codes, 1942, § 8176.5; Laws, 1966, ch. 383, §§ 1, 2; Laws, 1968, ch. 542, § 1, eff from and after passage (approved May 15, 1968).

Cross References — Payment of traffic fines by personal check, see § 63-9-12.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

ARTICLE 13.

DRIVING ON RIGHT SIDE OF ROADWAY: OVERTAKING AND PASSING; FOLLOWING.

Sec.
63-3-601. Vehicles to be driven on right half of roadway; exceptions.
63-3-603. Driving on roadways laned for traffic.
63-3-605. Driving upon one-way roadways and around rotary traffic islands.
63-3-607. Passing by vehicles proceeding in opposite directions.
63-3-609. Overtaking and passing of vehicles proceeding in same direction.
63-3-611. Overtaking and passing vehicles on left side of roadway.
63-3-613. Overtaking and passing upon right of another vehicle.
63-3-615. Meeting or overtaking school bus.
63-3-616. Blocking certain lanes of traffic by school bus driver permitted for the purpose of preventing being overtaken when receiving or discharging passengers.
63-3-617. Driving in center of highway; refusal to turn to right to allow overtaking vehicle to pass.
63-3-619. Distances to be maintained between traveling vehicles; inapplicability to operators of nonlead vehicles in a platoon under certain circumstances; requirement for operation of platoon.
63-3-621. Distance to be maintained between vehicle and traveling or parked fire apparatus or traveling or parked ambulance on emergency call.

§ 63-3-601. Vehicles to be driven on right half of roadway; exceptions.

Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

2. When the right half of a roadway is closed to traffic while under construction or repair;

3. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

4. Upon a roadway designated and signposted for one-way traffic.

HISTORY: Codes, 1942, § 8181; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Particular circumstances as negligence.
3. Exception in emergency.
4. Jury instructions.

1. In general.

Court erred in denying defendant's motion to suppress evidence of steroids found in a search of his vehicle during a traffic stop because driving in the left-hand lane of a four-lane highway did not violate Miss. Code Ann. § 63-3-601 or Miss. Code Ann. § 63-3-611. Couldery v. State, 890 So. 2d 959, 2004 Miss. App. LEXIS 1155 (Miss. Ct. App. 2004).

Miss. Code Ann. § 63-3-601 should be read in conjunction with Miss. Code Ann. § 63-3-611, which addresses the exceptions to § 63-3-601's requirement that traffic remain on the right side of the roadway. Couldery v. State, 890 So. 2d 959, 2004 Miss. App. LEXIS 1155 (Miss. Ct. App. 2004).

Court erred in denying defendant's motion to suppress evidence of steroids found in a search of his vehicle during a traffic stop for driving in the left-hand lane because Miss. Code Ann. § 63-3-601(4) exempted roadways designated and signposted for one-way traffic. Hence, the traffic stop was not valid. Couldery v. State, 890 So. 2d 959, 2004 Miss. App. LEXIS 1155 (Miss. Ct. App. 2004).

When a motor vehicle is driven upon the wrong side of the highway at a time not within the exception set out in this section [Code 1942, § 8181], such an operation of the vehicle is negligence, and if the driver's negligence is the sole cause of the accident, damages cannot be recovered for his injury caused by his own act. Lum v. Jackson Industrial Uniform Service, Inc., 253 Miss. 342, 175 So. 2d 501, 1965 Miss. LEXIS 992 (Miss. 1965).

2. Particular circumstances as negligence.

Driver of automobile who, in attempt to avoid hitting dead possum on road, loses control of automobile causing it to go off to right side and hit tree is liable for resulting injury to passenger; passenger who advises driver to avoid hitting possum is not contributorily negligent. Edwards ex rel. Edwards v. Patrick, 469 So. 2d 92, 1985 Miss. LEXIS 2087 (Miss. 1985).

In an action on behalf of an infant by her parents for injuries sustained by the the child when the driver of an automobile drove over her while leaving a parking space in front of the child's parents' home, the driver was not negligent per se for driving on the "wrong" side of the street where the infant was not within the protected class of pedestrians or drivers who act in reliance upon the orderly flow of traffic dictated by the statute and where the driver's admitted violation of this section was not the proximate cause of the injuries since the accident would have been no less likely to occur if the automobile had been facing in the opposite direction. Haver v. Hinson, 385 So. 2d 605, 1980 Miss. LEXIS 2018 (Miss. 1980).

The fact that driver of pulpwood truck, in which plaintiff was riding, was violating this section [Code 1942, § 8181] by having a portion of the truck on the left side of the highway at the time of colliding with a pickup truck which was coming out of a driveway, would only constitute contributory negligence which, under the comparative negligence statute, would cause damages to be reduced, and a mere violation of the law in the operation of a motor vehicle would not entitle the opposite party to a peremptory instruction. Winfield v. Magee, 232 Miss. 57, 98 So. 2d 130, 1957 Miss. LEXIS 443 (Miss. 1957).

3. Exception in emergency.
This section [Code 1942, § 8181] would not prevent a motorist turning to the left hand in an emergency, upon giving the proper and timely signal, to avoid striking a pedestrian. Robinson v. Sims, 227 Miss. 375, 86 So. 2d 318, 1956 Miss. LEXIS 701 (Miss. 1956).

4. Jury instructions.
Instructions granted under this section [Code 1942, § 8181] were not applicable to a city street with two traffic lanes and one parking lane. Critelli v. Blair, 203 So. 2d 604, 1967 Miss. LEXIS 1389 (Miss. 1967).

OPINIONS OF THE ATTORNEY GENERAL

Driving in the left lane of a four lane highway does not violate this section or § 63-3-611. Blakney, Oct. 11, 2002, A.G. Op. #02-0566.

RESEARCH REFERENCES

ALR.
Rights, duties, and liability with respect to narrow bridge or passage as between motor vehicle approaching from opposite directions. 47 A.L.R.2d 142.

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 245.

3 Am. Jur. Pl & Pr Forms (Rev), Automobile and Highway Traffic, Forms 291 et seq., 311-326, 421-427.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 812-873, 1341-1524, 1891-1898.

10 Am. Jur. Trials 493, Divider Line Automobile Accident Cases.

7 Am. Jur. Proof of Facts 333, Lookout.

29 Am. Jur. Proof of Facts 2d 121, Negligence of Driver During Overtaking and Passing Maneuver.

CJS.
61A C.J.S., Motor Vehicles § 1659.

Practice References.
Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-603. Driving on roadways laned for traffic.

(1) Whenever any roadway has been divided into three (3) or more clearly marked lanes for traffic, except through or bypassing a municipality, the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) A vehicle shall not be driven in the center lane upon a roadway which is divided into three (3) lanes except when:

(i) Overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance;

(ii) Such vehicle is in preparation for a left turn; or

(iii) Such center lane is at the time allocated exclusively to traffic moving in the direction such vehicle is proceeding and is signposted to give notice of such allocation.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction, and drivers of vehicles shall obey the directions of every such sign.

(d) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(e) Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. Persons riding two (2) abreast shall not impede the normal and reasonable movement of traffic and, on a laned roadway, shall ride within a single lane.

(2)(a) A vehicle shall not be driven in the outermost left lane of any roadway with two (2) or more lanes allowing for movement of traffic in the same direction except when:

(i) Overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(ii) The right lane(s) of a roadway is closed to traffic while under construction or repair;

(iii) The right lane(s) of the roadway is in disrepair or in an otherwise impassable or unsafe condition; or

(iv) A vehicle is preparing to exit the roadway on the left.

(b) A vehicle shall not be driven continuously in the outermost left lane of a multi-lane roadway whenever it impedes the flow of other traffic.

(c) A violation of this subsection (2) is punishable by a fine of not less than Five Dollars ($5.00) nor more than Fifty Dollars ($50.00).

HISTORY: Codes, 1942, § 8187; Laws, 1938, ch. 200; Laws, 1977, ch. 321, § 1; Laws, 1983, ch. 350, § 3, eff from and after July 1, 1983; Laws, 2018, ch. 360, § 1, eff from and after July 1, 2018.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability for negligence.
3. —Particular circumstances.
4. Proximate cause.
5. Directed verdict.

1. In general.

Court erred in denying defendant's motion to suppress evidence of steroids found in a search of his vehicle during a traffic stop because there was no evidence that defendant violated Miss. Code Ann. § 63-3-603 in moving from the right-hand lane to the left-hand lane. Couldery v. State, 890 So. 2d 959, 2004 Miss. App. LEXIS 1155 (Miss. Ct. App. 2004).

Liability for collision resulting when automobile proceeding east on 4 lane highway collides with truck which is blocking eastbound lanes while preparing to turn left onto westbound lanes is determined under statute governing right of way at intersection (§ 63-3-805), not under change of lane statute (§ 63-3-603). Mills v. Nichols, 467 So. 2d 924, 1985 Miss. LEXIS 2017 (Miss. 1985).

2. Liability for negligence.

A violation of this section [Code 1942, § 8187], when neither explained nor excused, constitutes negligence as a matter of law. Vicksburg Concrete Co. v. Poindexter, 198 So. 2d 245, 1967 Miss. LEXIS 1257 (Miss. 1967).

A motorist who drives his vehicle into the lane of opposing traffic without first ascertaining that it is free of oncoming vehicles or other obstructions is guilty of negligence as a matter of law. Vicksburg Concrete Co. v. Poindexter, 198 So. 2d 245, 1967 Miss. LEXIS 1257 (Miss. 1967).

3. —Particular circumstances.

Automobile driver making a left turn at an intersection, who stopped his vehicle 3 or 4 feet across the center line into the lane of an oncoming police motorcycle, violated Mississippi Code 63-3-603, and was guilty of negligence, and, if such negligence was the proximate cause of the accident, motorist would be liable for injuries sustained by police officer when his motorcycle struck the stopped car. McRee v. Raney, 493 So. 2d 1299, 1986 Miss. LEXIS 2617 (Miss. 1986).

Motorist held negligent in turning into another lane to avoid stalled car without first ascertaining the position of a following car. Cipriani v. Miller, 248 Miss. 672, 160 So. 2d 87, 1964 Miss. LEXIS 291 (Miss. 1964).

4. Proximate cause.

The alleged negligence, in driving contrary to part one of this section, by a truck driver who collided head-on with a station wagon was not, even if it occurred, the proximate cause of the accident where evidence indicated that the accident was inevitable because of the negligence of the station wagon's driver, who was going in the wrong direction on a four lane divided highway. Ward v. Valley Steel Products Co., 339 So. 2d 1361, 1976 Miss. LEXIS 1695 (Miss. 1976).

5. Directed verdict.

Under this section, a violation of which constitutes negligence as a matter of law, a municipality was entitled to a directed verdict, where the evidence showed that plaintiff-motorist moved into the adjoining left lane of southbound traffic to pass a vehicle at night and ran through a barricade before falling into a shallow excavation dug earlier in the day to repair a water line leak, and where the barricade was lit by smudge pots; plaintiff failed to ascertain that the adjoining lane was clear before she proceeded to pass the vehicle in front of her. City of Jackson v. Sullivan, 349 So. 2d 527, 1977 Miss. LEXIS 2157 (Miss. 1977).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 245.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 311-326, 421-427.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 861-873, 1341-1524, 1891-1898.

10 Am. Jur. Trials 493, Divider Line Automobile Accident Cases.

7 Am. Jur. Proof of Facts 333, Lookout.

11 Am. Jur. Proof of Facts 3d 395, Negligence of Motorist in Accident Involving Bicyclist.

11 Am. Jur. Proof of Facts 3d 503, Motor Vehicle Accident – Contributory Negligence by Bicyclist.

CJS.

61A C.J.S., Motor Vehicles § 1659.

§ 63-3-605. Driving upon one-way roadways and around rotary traffic islands.

(1) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(2) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

HISTORY: Codes, 1942, § 8186; Laws, 1938, ch. 200.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 236.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 861 et seq., 872, 1341-1524, 1531-2060.

CJS.

60 C.J.S., Motor Vehicles § 51.

§ 63-3-607. Passing by vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right. Upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main traveled portion of the roadway as nearly as possible.

HISTORY: Codes, 1942, § 8182: Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury issues.
3.-10. [Reserved for future use.]
11. Under former laws.

1. In general.

Instructions granted under this section [Code 1942, § 8182] were not applicable to a city street with two traffic lanes and one parking lane. Critelli v. Blair, 203 So. 2d 604, 1967 Miss. LEXIS 1389 (Miss. 1967).

In action arising out of collision of two trucks on highway, plaintiff insurer is entitled to peremptory instruction on whole question of liability of defendants when it is shown without any dispute that defendants' truck came approximately thirty inches across center line and onto wrong side of highway and ran into left rear wheel of insured truck at time when two trucks were meeting each other and at time when insured truck was wholly upon its side of highway, and peremptory instruction on behalf of defendants is properly refused. West v. Aetna Ins. Co., 208 Miss. 776, 45 So. 2d 585, 1950 Miss. LEXIS 296 (Miss. 1950).

2. Jury issues.

Where evidence showed that defendant's vehicle, encountering an icy patch of pavement, slid over into its left lane in violation of this section [Code 1942, § 8182] and struck plaintiff's automobile proceeding in the opposite direction, the question of negligence was one for the jury. Kight v. Murdock, 253 Miss. 572, 176 So. 2d 320, 1965 Miss. LEXIS 1014 (Miss. 1965).

3.-10. [Reserved for future use.]

11. Under former laws.

In prosecution against automobile driver for failure to seasonably turn to right, evidence showing defendant exceeded speed limit was inadmissible. Naylor v. State, 158 Miss. 99, 130 So. 102, 1930 Miss. LEXIS 24 (Miss. 1930).

Affidavit in prosecution of automobile driver for failure to seasonably turn to right held sufficient, if defective, for purposes of res judicata. Naylor v. State, 158 Miss. 99, 130 So. 102, 1930 Miss. LEXIS 24 (Miss. 1930).

Instruction authorizing recovery for damages in automobile collision, in case defendant undertook to pass plaintiff at more than 8 miles per hour, held erroneous. Gardner v. Comer, 151 Miss. 443, 118 So. 300, 1928 Miss. LEXIS 325 (Miss. 1928).

Affidavit in prosecution for failing to turn motor truck to right of center of highway on meeting another held sufficient. Sullivan v. State, 150 Miss. 542, 117 So. 374, 1928 Miss. LEXIS 184 (Miss. 1928).

Defendant held entitled to instruction on theory that automobile driver turned left to avoid collision. Priestley v. Hays, 147 Miss. 843, 112 So. 788, 1927 Miss. LEXIS 310 (Miss. 1927).

Instruction making it absolute duty of automobile driver to turn right held erroneous, where defense was defendant turned left to avoid collision. Priestley v. Hays, 147 Miss. 843, 112 So. 788, 1927 Miss. LEXIS 310 (Miss. 1927).

Automobile held required to turn to right of center of highway on meeting automobile. Crystal v. State, 147 Miss. 40, 112 So. 687, 1927 Miss. LEXIS 303 (Miss. 1927).

Failure to look for motor vehicle on wrong side of street held not contributory negligence. Clarke v. Hughes, 134 Miss. 377, 99 So. 6, 1924 Miss. LEXIS 276 (Miss. 1924).

Driver of motor vehicle not turning to right is liable for colliding with other vehicle on proper side of highway. Flynt v. Fondren, 122 Miss. 248, 84 So. 188, 1920 Miss. LEXIS 433 (Miss. 1920).

RESEARCH REFERENCES

ALR.

Liability for collision due to swaying or swinging of motor vehicle or trailer. 1 A.L.R.2d 167.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle. 39 A.L.R.2d 65.

Rights, duties, and liability with respect to narrow bridge or passage as between motor vehicle approaching from opposite directions. 47 A.L.R.2d 142.

Reciprocal rights, duties, and liabilities where motor vehicle proceeding in same direction, cuts back to the right. 48 A.L.R.2d 232.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 252, 253.

8 Am. Jur. 2d, Automobile and Highway Traffic §§ 816 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 291-304, 311-326, 331-336, 421-427.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 861-873, 1341-1524, 1891-1898, 1981-1984.

10 Am. Jur. Trials 493, Divider Line Automobile Accident Cases.

7 Am. Jur. Proof of Facts 333, Lookout.

29 Am. Jur. Proof of Facts 2d 121, Negligence of Driver During Overtaking and Passing Maneuver.

CJS.

60A C.J.S., Motor Vehicles §§ 707 et seq.

61A C.J.S., Motor Vehicles § 1750.

§ 63-3-609. Overtaking and passing of vehicles proceeding in same direction.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules otherwise provided in this article:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

HISTORY: Codes, 1942, § 8183; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instructions.
3. Jury issues.

1. In general.

Motorist overtaking and passing bicycle is required to do so at safe distance; motorist's admission that he did not entirely clear bicyclist's lane of traffic as he passed bicyclist but was only straddling center line and was unaware of location of vehicle in relation to bicycle as he passed it is sufficient basis upon which jury may find that collision between motorist's vehicle and bicycle was caused by motorist's negligence. Rideout v. Knight, 463 So. 2d 1042, 1985 Miss. LEXIS 1866 (Miss. 1985).

2. Instructions.

The trial court in a negligence action arising out of an automobile accident properly granted plaintiff's peremptory instruction on the issue of liability, where defendant driver testified that on the day of the accident it was raining and the road was wet, where he admitted knowing that oil rises to the surface of wet asphalt and admitted seeing a roadsign that said "slippery when wet," and where he further stated that, while passing plaintiff, he had lost control of his truck, in that §§ 63-3-609 and 63-3-611 imposed upon defendant a duty of care in passing plaintiff, a duty he failed to exercise in ignoring the danger he knew lay ahead, which resulted in the loss of control of his truck. Barkley v. Miller Transporters, Inc., 450 So. 2d 416, 1984 Miss. LEXIS 1693 (Miss. 1984).

In an action for damages resulting when defendant's truck-trailer unit ran into the rear end of plaintiff's truck-trailer unit on the curved portion of the highway, the court did not err in refusing to charge the defendant's driver with negligence in respect to speeding, overtaking on the right, and following too closely, particularly in view of Code 1942, § 1455. Green Truck Lines, Inc. v. Hooper, 233 Miss. 794, 103 So. 2d 443, 1958 Miss. LEXIS 441 (Miss. 1958).

3. Jury issues.

Where defendant driver of overtaken truck permitted his vehicle to drift across the centerline and speeded up when plaintiff attempted to pass on the left, the evidence was sufficient to raise a jury question on the issue of the truckdriver's negligence. Lewis Grocery Co. v. Blackwell, 209 So. 2d 639, 1968 Miss. LEXIS 1465 (Miss. 1968).

RESEARCH REFERENCES

ALR.

Duty and liability of overtaken driver with respect to adjusting speed to that of passing vehicle. 91 A.L.R.2d 1260.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 247-251.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 843, 850 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 231-239, 411.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 911-924, 1341-1524, 1971-1973.

10 Am. Jur. Trials 493, Divider Line Automobile Accident Cases.

7 Am. Jur. Proof of Facts 333, Lookout.

8 Am. Jur. Proof of Facts 707, Passing.

30 Am. Jur. Proof of Facts 639, Bicycle Accidents.

CJS.

60A C.J.S., Motor Vehicles §§ 723 et seq.

61A C.J.S., Motor Vehicles § 1750.

§ 63-3-611. Overtaking and passing vehicles on left side of roadway.

(1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred (100) feet of any vehicle approaching from the opposite direction.

(2) No vehicle shall, in overtaking and passing another vehicle or at any other time, be driven to the left side of the roadway under the following conditions:

(a) When approaching the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed;

(b) When approaching within one hundred (100) feet of any marked or readily distinguishable bridge, viaduct or tunnel on any roadway other than a four-lane roadway;

(c) When approaching within one hundred (100) feet of or traversing any marked or readily distinguishable intersection or railroad grade crossing;

(d) When official signs are in place directing that traffic keep to the right, or a distinctive center line is marked, which distinctive line also so directs traffic as declared in the sign manual adopted by the State Transportation Commission.

HISTORY: Codes, 1942, § 8185; Laws, 1938, ch. 200; Laws, 1991, ch. 402, § 1; Laws, 1997, ch. 447, § 1, eff from and after passage (approved March 25, 1997).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Negligence.
4. Contributory negligence.
5. Proximate cause.
6. Instructions.

1. In general.

Code 1972 § 63-3-611(2)(a) is concerned not only with oncoming traffic but also with traffic to the rear, and if a driver cannot see to the rear, he cannot comply with the requirements of Code 1972 § 63-3-707. Gates v. Murphree, 286 So. 2d 291, 1973 Miss. LEXIS 1316 (Miss. 1973).

In enacting this section [Code 1942, § 8185] it was the intention of the legislature to prohibit a car from being on the left hand side of the road undertaking to pass another car going in the same direction while within 100 feet of any hazards, and the entire statute puts emphasis upon prohibiting overtaking and passing another car headed in the same direction except at a safe distance from places where hazards and dangers might be anticipated. Rayborn v. Freeman, 209 So. 2d 193, 1968 Miss. LEXIS 1446, 1968 Miss. LEXIS 1447 (Miss. 1968).

An intersection not marked by signs and not observable by reasonably careful motorist is not an intersection within the meaning of the statute. Gore v. Patrick, 246 Miss. 715, 150 So. 2d 169, 1963 Miss. LEXIS 497 (Miss. 1963).

Violation of this provision is negligence. Gore v. Patrick, 246 Miss. 715, 150 So. 2d 169, 1963 Miss. LEXIS 497 (Miss. 1963).

2. Applicability.

Court erred in denying defendant's motion to suppress evidence of steroids found in a search of his vehicle during a traffic stop because driving in the left-hand lane of a four-lane highway did not violate Miss. Code Ann. § 63-3-601 or Miss. Code Ann. § 63-3-611. Couldery v. State, 890 So. 2d 959, 2004 Miss. App. LEXIS 1155 (Miss. Ct. App. 2004).

Miss. Code Ann. § 63-3-601 should be read in conjunction with Miss. Code Ann. § 63-3-611, which addresses the exceptions to § 63-3-601's requirement that traffic remain on the right side of the roadway. Couldery v. State, 890 So. 2d 959, 2004 Miss. App. LEXIS 1155 (Miss. Ct. App. 2004).

Where a statute provided that no vehicle shall in overtaking and passing other vehicle be driven on the left side of the roadway when approaching within one hundred feet of an intersection, this statute was not applicable to overtaking automobile which attempted to pass truck as the truck driver attempted to make a left turn into a driveway leading to a store, where there was no showing that the driveway was a highway within the meaning of the statute. Frizell v. Guthrie, 222 Miss. 501, 76 So. 2d 361, 1954 Miss. LEXIS 671 (Miss. 1954).

3. Negligence.

Where the driver of a vehicle overtaking another vehicle on a curve testified that he looked in his rear view mirror and did not see a third vehicle which was overtaking him, even accepting his testimony as true, this did not absolve him from negligence, since he was violating Code 1972 § 63-3-611 intended to prevent passing when a driver cannot see a vehicle behind him because of a curve. Gates v. Murphree, 286 So. 2d 291, 1973 Miss. LEXIS 1316 (Miss. 1973).

In attempting to pass three motor vehicles within 100 feet of an intersection, the existence of which was well known to him, the defendant was clearly negligent. Huff v. Boyd, 242 So. 2d 698, 1971 Miss. LEXIS 1496 (Miss. 1971).

A truck driver who drove on the left side of a highway while attempting to pass an automobile while both vehicles were approaching an unmarked T intersection which was difficult to see, was not guilty of negligence as a matter of law on the theory that he violated the statute prohibiting driving on the left side of the highway when approaching within 100 feet of any intersection, since it would be unreasonable to require a motorist to observe this statute with respect to intersections which are not marked by signs or observable by the operator of a vehicle in the exercise of reasonable care. Coleman v. Ward, 232 So. 2d 731, 1970 Miss. LEXIS 1642 (Miss. 1970).

Motorist who, in violation of this section [Code 1942, § 8185], attempted to pass another car on the left within 100 feet of a dangerous intersection, and at the same time failed to decrease his speed as required by subd (b) of Code 1942, § 8176 was guilty of negligence which proximately caused the collision at the intersection. McCorkle v. United Gas Pipe Line Co., 253 Miss. 169, 175 So. 2d 480, 1965 Miss. LEXIS 979 (Miss. 1965).

A bus driver did not have the right under the law to overtake and pass a preceding vehicle, regardless of the fact that the vision of the driver of the preceding vehicle was lessened or obscured, when the bus driver observed conditions that would cause a reasonably prudent driver to proceed with caution. Peel v. Gulf Transport Co., 252 Miss. 797, 174 So. 2d 377, 1965 Miss. LEXIS 1148 (Miss. 1965).

To cross a yellow line marking center of a highway in making a left turn into an intersecting road or a driveway is not negligence per se. Edwards v. Murphree, 249 Miss. 78, 160 So. 2d 689, 1964 Miss. LEXIS 377 (Miss. 1964).

Violation of this provision is negligence. Gore v. Patrick, 246 Miss. 715, 150 So. 2d 169, 1963 Miss. LEXIS 497 (Miss. 1963).

4. Contributory negligence.

Contributory negligence of driver of plaintiff's truck, in violating this section [Code 1942, § 8185] and failing to observe other requirements of the Uniform Highway Traffic Regulation Law when it collided with defendant's car, negligently stopped on the traveled highway at the entrance to bridge, warranted reduction of verdict for plaintiff by 50 per cent. Gulf Refining Co. v. Brown, 196 Miss. 131, 16 So. 2d 765, 1944 Miss. LEXIS 173 (Miss. 1944).

5. Proximate cause.

Even if a railroad company were negligent for placing its guard rail too close to the paved portion of a highway, the acts of the host driver and of an overtaken motorist in attempting to pass a pickup truck within 100 feet of a railroad crossing, were the efficient, independent intervening proximate causes of the fatal accident resulting in decedent's death when the host driver's automobile smashed into the guard rail. Milam v. Gulf, M. & O. R. Co., 284 So. 2d 309, 1973 Miss. LEXIS 1258 (Miss. 1973).

6. Instructions.

Trial court did not in err when it refused to give a motor vehicle accident victim's peremptory instruction on negligence per se because the question of whether the intersection where the accident occurred as the victim was making a left turn when hit by a passing vehicle was marked or readily distinguishable was left for the jury to determine. McLaughlin v. North Drew Freight, Inc., 249 So. 3d 1081, 2018 Miss. App. LEXIS 291 (Miss. Ct. App. 2018).

A trial court in a personal injury action did not err when it refused to instruct the jury that an automobile accident occurred within an "intersection" so that the defendant was in violation of law, pursuant to § 63-3-611(2), by attempting to pass within 100 feet of the intersection, since the conjunction where the accident took place did not constitute an "intersection" within the meaning of § 63-3-129. An "intersection" requires the conjunction of "2 highways," and one of the roads which formed the conjunction where the accident took place did not constitute a "highway" where the only evidence as to whether the road was public was the existence of a "Plant Entrance" sign and testimony regarding usage by employees of the electric plant; this evidence did not indicate that the road was public, but instead was consistent with permissive use of a private driveway. Stewart v. Davis, 571 So. 2d 926, 1990 Miss. LEXIS 697 (Miss. 1990).

Instruction to jury that it would constitute negligence per se if tractor-trailer was attempting to pass another vehicle and crossed double-yellow no passing line going up hill with 79,000 pound load would be proper. Blackmon v. Payne, 510 So. 2d 483, 1987 Miss. LEXIS 2522 (Miss. 1987).

The trial court in a negligence action arising out of an automobile accident properly granted plaintiff's peremptory instruction on the issue of liability, where defendant driver testified that on the day of the accident it was raining and the road was wet, where he admitted knowing that oil rises to the surface of wet asphalt and admitted seeing a roadsign that said "slippery when wet," and where he further stated that, while passing plaintiff, he had lost control of his truck, in that §§ 63-3-609 and 63-3-611 imposed upon defendant a duty of care in passing plaintiff, a duty he failed to exercise in ignoring the danger he knew lay ahead, which resulted in the loss of control of his truck. Barkley v. Miller Transporters, Inc., 450 So. 2d 416, 1984 Miss. LEXIS 1693 (Miss. 1984).

In a personal injury suit, instructions which required the defendant overtaking motorist under all circumstances to be diligent and to anticipate the presence of others, and placing an absolute duty to pass safely and to avoid injury to others on such defendant, who collided with an oncoming motorist, were erroneous in placing a higher standard of care on the defendant than required by law and providing no factual guide for determining his negligence, since the standard of the law is reasonable care. Acord v. Moore, 243 So. 2d 55, 1971 Miss. LEXIS 1501 (Miss. 1971).

It was erroneous to grant the "emergency instruction" where it raised an inference that if the driver of a truck had suddenly turned his vehicle across the center line into the left lane of the highway at the time when the defendant's bus was about to pass, that then the defendant was not guilty of contributory negligence in driving at an unlawful speed and approaching the truck at an unreasonable rate in an unreasonable manner. Peel v. Gulf Transport Co., 252 Miss. 797, 174 So. 2d 377, 1965 Miss. LEXIS 1148 (Miss. 1965).

It was erroneous to instruct the jury that a bus driver could pass a preceding truck regardless of the surrounding circumstances if he did not know of the iced-over condition of the rear and side windows of the truck, because these instructions told the jury the defendant bus driver was not guilty of contributory negligence, regardless of the known surrounding circumstances and his duty to foresee the changes and to proceed with caution at a speed at which he could control the operation of the bus. Peel v. Gulf Transport Co., 252 Miss. 797, 174 So. 2d 377, 1965 Miss. LEXIS 1148 (Miss. 1965).

An instruction is erroneous which tells the jury for the defendant bus driver that the defendant cannot be held for negligence if, while exercising ordinary care to see, he did not see or know the condition of the glass on the rear and sides of the preceding pickup truck, when the evidence showed in fact that before attempting to pass the truck the bus driver was aware of the iced-over condition of the rear and side windows of the truck. Peel v. Gulf Transport Co., 252 Miss. 797, 174 So. 2d 377, 1965 Miss. LEXIS 1148 (Miss. 1965).

In a personal injury action arising out of a motor vehicle collision, an instruction that if the driver of the car in which the plaintiff was riding negligently attempted to pass the defendant's vehicle within 100 feet of an intersection, and such negligence was the sole proximate cause of the accident, the jury could find for the defendant, was correct, where the defendant's proof showed that the attempt to pass was made within 50 or 60 feet of the intersection, and the intersection involved was one coming within the contemplation of the statute. Clark v. Mask, 232 Miss. 65, 98 So. 2d 467, 1957 Miss. LEXIS 445 (Miss. 1957).

Peremptory instruction to jury, that plaintiff violated Mississippi statute providing that a person riding a bicycle is prohibited from passing another vehicle going in the same direction on the right hand side of said vehicle and is also prohibited from passing another vehicle under any circumstances when approaching within 100 feet of or traversing any intersection, was proper in an action for injuries where plaintiff bicyclist, approaching defendant's truck from rear, tried to pass it at an intersection, was hit by the truck as it also started to turn right, and was catapulted into pathway of another car. Cochran v. Peeler, 209 Miss. 394, 47 So. 2d 806, 1950 Miss. LEXIS 404 (Miss. 1950).

OPINIONS OF THE ATTORNEY GENERAL

Driving in the left lane of a four lane highway does not violate this section or § 63-3-601. Blakney, Oct. 11, 2002, A.G. Op. #02-0566.

RESEARCH REFERENCES

ALR.

Negligence of motorist colliding with vehicle approaching in wrong lane. 47 A.L.R.2d 6.

Negligence of motorist as to injury or damage occasioned in avoiding collision with vehicle approaching in wrong lane. 47 A.L.R.2d 119.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection. 53 A.L.R.2d 850.

Comment Note. – What is a street or highway intersection within traffic rules. 7 A.L.R.3d 1204.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 247-251.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 843, 850 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 231-239, 411.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 911-924, 1341-1524, 1971-1973.

10 Am. Jur. Trials 493, Divider Line Automobile Accident Cases.

7 Am. Jur. Proof of Facts 333, Lookout.

8 Am. Jur. Proof of Facts 707, Passing.

30 Am. Jur. Proof of Facts 639, Bicycle Accidents.

29 Am. Jur. Proof of Facts 2d 121, Negligence of Driver During Overtaking and Passing Maneuver.

CJS.

60A C.J.S., Motor Vehicles §§ 723 et seq.

61A C.J.S., Motor Vehicles § 1750.

§ 63-3-613. Overtaking and passing upon right of another vehicle.

(1) The driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

(2) The driver of a vehicle may overtake and, allowing sufficient clearance, pass another vehicle proceeding in the same direction either upon the left or upon the right on a roadway with unobstructed pavement of sufficient width for four (4) or more lines of moving traffic when such movement can be made in safety. The left lane shall be the preferred passing lane. No person shall drive off the pavement or upon the shoulder of the roadway overtaking or passing on the right.

HISTORY: Codes, 1942, § 8184; Laws, 1938, ch. 200; Laws, 1977, ch. 321, § 2, eff from and after passage (approved March 4, 1977).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instructions.

1. In general.

Where a driver of an oil truck in order to make a right turn first swung to the left, the driver of following pole truck ought not to have attempted to pass on the right unless the vehicle in front of him was making or about to make a left turn. American Creosote Works, Inc. v. Rose Bros., Inc., 211 Miss. 173, 51 So. 2d 220, 1951 Miss. LEXIS 345 (Miss. 1951).

Evidence in prosecution for manslaughter by culpable negligence in the operation of a motor truck supported defense that defendant had right to pass to the right of an overtaken wagon which was making or about to make a turn to the left. Goudy v. State, 203 Miss. 366, 35 So. 2d 308, 1948 Miss. LEXIS 280 (Miss. 1948).

2. Instructions.

Peremptory instruction to jury, that plaintiff violated Mississippi statute providing that a person riding a bicycle is prohibited from passing another vehicle going in the same direction on the right hand side of said vehicle and is also prohibited from passing another vehicle under any circumstances when approaching within 100 feet of or traversing any intersection, was proper in an action for injuries where plaintiff bicyclist approaching defendant's truck from rear tried to pass it at an intersection, was hit by the truck as it also started to turn right, and was catapulted into pathway of another car. Cochran v. Peeler, 209 Miss. 394, 47 So. 2d 806, 1950 Miss. LEXIS 404 (Miss. 1950).

RESEARCH REFERENCES

ALR.

Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction. 38 A.L.R.2d 114.

Reciprocal rights, duties, and liabilities where motor vehicle proceeding in same direction, cuts back to the right. 48 A.L.R.2d 232.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 251.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 847 et seq.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 921-923, 1341-1524, 1531-2060.

8 Am. Jur. Proof of Facts 707, Passing.

24 Am. Jur. Proof of Facts 559, Right Turns.

29 Am. Jur. Proof of Facts 2d 121, Negligence of Driver During Overtaking and Passing Maneuver.

CJS.

60A C.J.S., Motor Vehicles § 744.

§ 63-3-615. Meeting or overtaking school bus.

(1)(a) The driver of a vehicle upon a street or highway upon meeting or overtaking any school bus that has stopped on the street or highway for the purpose of receiving or discharging any school children shall come to a complete stop at least ten (10) feet from the school bus before reaching the school bus when there is in operation on the school bus the flashing red lights provided in Section 63-7-23, or when a retractable, hand-operated stop sign is extended; the driver shall not proceed until the children have crossed the street or highway and the school bus has resumed motion or the flashing red lights are no longer actuated and the hand-operated stop sign is retracted.

(b) The driver of a vehicle upon a divided highway that has four (4) lanes or more and permits at least two (2) lanes of traffic to travel in opposite directions need not stop upon meeting or passing a school bus that is stopped in the opposing roadway, or if the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(2)(a) Except as provided in paragraph (b), any person violating the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon a first conviction thereof shall be fined not less than Three Hundred Fifty Dollars ($350.00) nor more than Seven Hundred Fifty Dollars ($750.00), or imprisoned for not more than one (1) year, or both. For a second or subsequent offense, the offenses being committed within a period of five (5) years, the person shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Seven Hundred Fifty Dollars ($750.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), or imprisoned for not more than one (1) year, or both. In addition, the Commissioner of Public Safety or his duly authorized designee, after conviction for a second or subsequent offense and upon receipt of the court abstract, shall suspend the driver's license and driving privileges of the person for a period of ninety (90) days.

(b) A conviction under this section for a violation resulting in any injury to a child who is in the process of boarding or exiting a school bus shall be a violation of Section 97-3-7, and a violator shall be punished under subsection (2) of that section.

(3) This section shall be applicable only in the event the school bus shall bear upon the front and rear thereon a plainly visible sign containing the words "school bus" in letters not less than four (4) inches in height.

(4) If any person witnesses the driver of any vehicle violating the provisions of this section and the identity of the driver of the vehicle is not otherwise apparent, it shall be a rebuttable inference that the person in whose name the vehicle is registered committed the violation. If charges are filed against multiple owners of a motor vehicle, only one (1) of the owners may be convicted and court costs may be assessed against only one (1) of the owners. If the vehicle that is involved in the violation is registered in the name of a rental or leasing company and the vehicle is rented or leased to another person at the time of the violation, the rental or leasing company may rebut the inference of guilt by providing the law enforcement officer or prosecuting authority with a copy of the rental or lease agreement in effect at the time of the violation.

HISTORY: Codes, 1942, § 8226; Laws, 1938, ch. 200; Laws, 1946, ch. 341; Laws, 1946, ch. 420, § 10; Laws, 1974, ch. 304; Laws, 1986, ch. 368; Laws, 2011, ch. 481, § 1; Laws, 2016, ch. 340, § 1, eff from and after July 1, 2016; Laws, 2019, ch. 352, § 1, eff from and after July 1, 2019.

Editor's Notes — Chapter 481, Laws of 2011, which amended this section, is known as "Nathan's Law."

Cross References — Transportation of school children generally, see § 37-41-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 280.

§ 63-3-616. Blocking certain lanes of traffic by school bus driver permitted for the purpose of preventing being overtaken when receiving or discharging passengers.

A school bus driver, for the purpose of preventing being overtaken when receiving or discharging any school children, may stop on a street or highway blocking the two (2) outermost right lanes, regardless of the number of lanes on the street or highway. For a two-lane street or highway, this provision allows for blocking both lanes. Such school bus driver may only block both of these lanes during the time that the school bus is receiving or discharging any school children.

HISTORY: Laws, 2019, ch. 352, § 2, eff from and after July 1, 2019.

§ 63-3-617. Driving in center of highway; refusal to turn to right to allow overtaking vehicle to pass.

It shall be unlawful for the driver of any truck or other vehicle to drive in or near the center of any highway for a distance of more than two hundred yards, or at any time to refuse to turn to the right in order that any driver desiring to pass said truck or other vehicle, may drive at a higher legal rate of speed.

HISTORY: Codes, 1942, § 8188; Laws, 1938, ch. 200; Laws, 1962, ch. 525, eff from and after passage (approved April 25, 1962).

JUDICIAL DECISIONS

ANALYSIS

1. No violation of statute.
2. Liability for auto accident.

1. No violation of statute.
State failed to prove the elements of the offense of driving in or near the center of any highway for a distance of more than 200 yards because there was no proof that defendant drove more than 200 yards in or near the center line of any highway in violation of Miss. Code Ann. § 63-3-617; although a highway patrolman testified that defendant's vehicle was behind two other cars and that it was traveling close to the center line, there was no mention or indication that the patrolman observed defendant following too close to the center line of any highway, and there was no evidence to suggest that he observed defendant driving in such a manner as to impede a driver of any truck or vehicle from overtaking and passing him. Fluker v. State, 44 So. 3d 1029, 2010 Miss. App. LEXIS 95 (Miss. Ct. App. 2010), cert. denied, 2010 Miss. LEXIS 509 (Miss. Sept. 30, 2010), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 522 (Miss. 2010).

2. Liability for auto accident.
Truck driver was not at fault in an auto accident when a motorist who was passing

the truck struck an oncoming vehicle on a highway because the truck driver had no duty to pull off the roadway. The fact that the truck driver may have had room to pull over did not create a duty when none existed and, given the steep drop-off to the right and the driver's heavy load, it could not be said that the truck driver failed to exercise reasonable care by not pulling onto the partially paved shoulder. Owens v. Brooks, 321 So. 3d 1202, 2021 Miss. App. LEXIS 24 (Miss. Ct. App.), cert. denied, 322 So. 3d 1290, 2021 Miss. LEXIS 202 (Miss. 2021).

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 847, 852, 853.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 924, 1341-1524, 1972.

10 Am. Jur. Trials 493, Divider Line Automobile Accident Cases.

7 Am. Jur. Proof of Facts 333, Lookout.

29 Am. Jur. Proof of Facts 2d 121, Negligence of Driver During Overtaking and Passing Maneuver.

CJS.

60A C.J.S., Motor Vehicles §§ 738-740.

§ 63-3-619. Distances to be maintained between traveling vehicles; inapplicability to operators of nonlead vehicles in a platoon under certain circumstances; requirement for operation of platoon.

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any motor truck or motor truck drawing another vehicle when traveling upon a roadway outside of a business or residence district shall not follow within three hundred (300) feet of another motor truck or motor truck drawing another vehicle. The provisions of this subsection shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks.

(3)(a) Subject to the provisions of paragraph (b) of this subsection, subsections (1) and (2) of this section shall not apply to the operator of a nonlead vehicle in a platoon, as defined in Section 63-3-103(k), as long as the platoon is operating on a limited access divided highway with more than one (1) lane in each direction and the platoon consists of not more than two (2) motor vehicles.

(b) A platoon may be operated in this state only after an operator files a plan for approval of general platoon operations with the Department of Transportation. If that department approves the submission, it shall forward the plan to the Department of Public Safety for approval. The plan shall be reviewed and either approved or disapproved by the Department of Transportation and the Department of Public Safety within thirty (30) days after it is filed. If approved by both departments, the operator shall be allowed to operate the platoon five (5) working days after plan approval. The Motor Carrier Division of the Department of Public Safety shall develop the acceptable standards required for each portion of the plan.

HISTORY: Codes, 1942, § 8188; Laws, 1938, ch. 200; Laws, 1962, ch. 525, eff from and after passage (approved April 25, 1962); Laws, 2018, ch. 445, § 2, eff from and after January 1, 2019.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.
3. Negligence.
4. —Proximate cause.
5. —Sudden emergency.
6. Instructions.
7. Directed verdict.
8. Sufficiency of evidence.

1. In general.

Minimum following distances specified in § 63-3-619 are applicable to vehicle approaching slow moving truck which has just turned into left-easternmost lane of southbound lanes of 4 lane highway. Byrd v. F-S Prestress, 464 So. 2d 63, 1985 Miss. LEXIS 1899 (Miss. 1985).

One truck should not follow another truck more closely than is reasonable and prudent. American Creosote Works, Inc. v. Rose Bros., Inc., 211 Miss. 173, 51 So. 2d 220, 1951 Miss. LEXIS 345 (Miss. 1951).

2. Constitutionality.

Tailgating statute is not impermissibly vague and does not fail to give a driver notice of the prohibited conduct; the statute, coupled with the rules of the road, is sufficiently definite such that an ordinary person can understand the prohibited conduct and that law enforcement can avoid arbitrary enforcement. The statute is sufficiently specific to pass constitutional scrutiny. Nolan v. State, 182 So. 3d 484, 2016 Miss. App. LEXIS 21 (Miss. Ct. App. 2016).

3. Negligence.

Trial court did not err in failing to find that a police officer committed a traffic violation by tailgating a driver's vehicle because the driver had to show more than mere negligence to establish reckless disregard and remove a city's immunity; the statute applies to traffic regulations but does not address governmental immunity. Carothers v. City of Water Valley, 242 So. 3d 138, 2017 Miss. App. LEXIS 281 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 67, 2018 Miss. LEXIS 206 (Miss. 2018).

Driver of motor vehicle was entitled to peremptory instruction or directed verdict on liability, although there is no per se rule that driver of following car is negligent if he collides with rear of preceding vehicle, where driver of following car did not know her approximate speed, was driving approximately one car length behind preceding vehicle when she saw truck turn off in front of preceding vehicle, and saw preceding vehicle's brake lights come on; there was no way any rational jury could reach any conclusion but that following driver failed in either one or more of her duties to keep proper lookout ahead, keep her car under proper control, and drive at speed and sufficient distance behind preceding vehicle to stop without colliding into its rear end when that vehicle stopped to allow truck to turn off street. White v. Miller, 513 So. 2d 600, 1987 Miss. LEXIS 2833 (Miss. 1987).

One who on attempting to pass a car ahead of him was prevented by an approaching car and on returning to his proper lane was obliged to apply his brakes to avoid striking the car ahead, resulting in a skid, held negligent toward a passenger. Gregory v. Thompson, 248 Miss. 431, 160 So. 2d 195, 1964 Miss. LEXIS 271 (Miss. 1964).

Evidence held to show negligence in following another's car too closely on a highway made slippery by hail. Klumok v. Young, 239 Miss. 393, 123 So. 2d 535, 1960 Miss. LEXIS 297 (Miss. 1960).

Where, under either plaintiff's or defendant's evidence, the defendant, at the speed he was traveling, was following too closely to the car preceding him, which stopped, causing defendant to enter into the opposite lane of traffic and collide head-on with a truck in which plaintiff's decedent was riding, plaintiff was entitled to a peremptory instruction, since the defendant's negligence proximately caused the collision and death. Meeks v. McBeath, 231 Miss. 504, 95 So. 2d 791, 1957 Miss. LEXIS 535 (Miss. 1957).

4. —Proximate cause.

Where the driver of a cattle truck suddenly pulled his truck across the wrong lane of traffic in order to avoid the danger created by the action of a bus driver in bringing his bus to a stop which was stopped suddenly, partially on traveled portion of a highway, the action of the bus driver in bringing his bus to a stop partly on the paved and main portion of the highway was a proximate cause of the collision. Continental Southern Lines, Inc. v. Klaas, 217 Miss. 795, 63 So. 2d 211, 65 So. 2d 575, 1953 Miss. LEXIS 496 (Miss. 1953).

5. —Sudden emergency.

In an action for injuries sustained in a three vehicle collision, it was error to instruct the jury on the sudden emergency doctrine with respect to the defendant motorist, where it was shown that just before striking the plaintiff's vehicle, the defendant had been following behind at a distance of only 36 feet while traveling 45 miles per hour in violation of Code 1942, § 8188. Dailey v. Acme Finance Corp., 234 So. 2d 902, 1970 Miss. LEXIS 1423 (Miss. 1970).

Where, under either plaintiff's or defendant's evidence, the defendant, at the speed he was traveling, was following too closely to the car preceding him, which stopped, causing defendant to enter into the opposite lane of traffic and collide head-on with a truck in which plaintiff's decedent was riding, plaintiff was entitled to a peremptory instruction, since the defendant's negligence proximately caused the collision and death; and the defendant could not invoke the sudden emergency rule because his own testimony showed that the emergency was proximately caused by his own fault. Meeks v. McBeath, 231 Miss. 504, 95 So. 2d 791, 1957 Miss. LEXIS 535 (Miss. 1957).

Where the death of a driver of an automobile resulted from collision from an oncoming truck which entered the wrong lane when a truck before it stopped to avoid hitting a bus which suddenly stopped partially on a highway, and the driver of the truck was found to be following too closely, the driver of the truck was not entitled to invoke the doctrine of sudden emergency in order to show that the sole proximate cause of the collision was negligence of the bus driver, since the emergency was caused by truck driver. Continental Southern Lines, Inc. v. Klaas, 217 Miss. 795, 63 So. 2d 211, 65 So. 2d 575, 1953 Miss. LEXIS 496 (Miss. 1953).

6. Instructions.

Jury was clearly instructed on Miss. Code Ann. §§ 63-3-809(1), 63-3-619(2), and as they fairly announced the applicable law in this wrongful death case, the circuit court did not abuse its discretion in denying appellant's proposed instruction. Rushing v. Mobile Forest Prods., 282 So. 3d 708, 2019 Miss. App. LEXIS 370 (Miss. Ct. App. 2019).

In an action for injuries sustained in a three vehicle collision, it was error to instruct the jury on the sudden emergency doctrine with respect to the defendant motorist, where it was shown that just before striking the plaintiff's vehicle, the defendant had been following behind at a distance of only 36 feet while traveling 45 miles per hour in violation of Code 1942, § 8188. Dailey v. Acme Finance Corp., 234 So. 2d 902, 1970 Miss. LEXIS 1423 (Miss. 1970).

Court's instruction for plaintiff that it was the duty of the driver of defendant's truck at all times to maintain a reasonably safe and proper distance between his vehicle and any vehicle proceeding in front of his truck, that it was his duty to anticipate that preceding vehicles would slow or would stop on the highway, and that it was his duty to keep the truck under reasonable control at all times and to take reasonable precautions commensurate with the type of vehicle and load thereon, imposed no absolute liability on the truckdriver for the consequences of his actions. Bill Hunter Truck Lines, Inc. v. Jernigan, 384 F.2d 361, 1967 U.S. App. LEXIS 4789 (5th Cir. Miss. 1967).

In an action for damages resulting when defendant's truck-trailer unit ran into the rear end of plaintiff's truck-trailer unit, instructions, which when read together, focused the attention of the jury on the real issue of whether the plaintiff's truck was overtaken from behind, run into and damaged by the negligence of the defendant's driver in operating his truck without proper control, without keeping a proper lookout, and at a negligent rate of speed, or whether plaintiff's driver negligently stopped his truck on the half-moon curve in the right lane of the pavement when it was unnecessary and impractical to do so, and, if so, whether such negligence was the sole, proximate cause of the collision, were not reversibly erroneous, even though some imperfections could be found therein. Green Truck Lines, Inc. v. Hooper, 233 Miss. 794, 103 So. 2d 443, 1958 Miss. LEXIS 441 (Miss. 1958).

In an action for damages resulting when defendant's truck-trailer unit ran into the rear end of plaintiff's truck-trailer unit on the curved portion of the highway, the court did not err in refusing to charge the defendant's driver with negligence in respect to speeding, overtaking on the right, and following too closely, particularly in view of Code 1942, § 1455. Green Truck Lines, Inc. v. Hooper, 233 Miss. 794, 103 So. 2d 443, 1958 Miss. LEXIS 441 (Miss. 1958).

Where, under either plaintiff's or defendant's evidence, the defendant, at the speed he was traveling, was following too closely to the car preceding him, which stopped, causing defendant to enter into the opposite lane of traffic and collide head-on with a truck in which plaintiff's decedent was riding, plaintiff was entitled to a peremptory instruction, since the defendant's negligence proximately caused the collision and death. Meeks v. McBeath, 231 Miss. 504, 95 So. 2d 791, 1957 Miss. LEXIS 535 (Miss. 1957).

Since Code 1942, § 8149, provides that this section [Code 1942, § 8188] is applicable to a person riding a bicycle, an instruction to the jury, that if they believe that the plaintiff violated this section [Code 1942, § 8188] and such violation was proximate cause of accident they should find for the defendants, was proper in an action for injuries to the plaintiff bicyclist who, approaching the defendant's truck from the rear, tried to pass it at an intersection, was hit by the truck as it also started to turn right, and was catapulted into pathway of another car. Cochran v. Peeler, 209 Miss. 394, 47 So. 2d 806, 1950 Miss. LEXIS 404 (Miss. 1950).

In action for damages to automobile arising out of ramming by truck from rear, it was error for court to refuse plaintiff instruction that failure of any person to perform duty imposed by statute is negligence in itself, and that should jury find that defendant in his truck immediately prior to and at time of collision followed vehicle of plaintiff more closely than was reasonable and prudent, having due regard to speed of such vehicles and traffic upon and condition of highway, and that such failure was proximate cause of collision, his conduct constituted actionable negligence, and refusal to grant this instruction is not cured by granting of instruction which also includes another point. Wilburn v. Gordon, 209 Miss. 27, 45 So. 2d 844, 1950 Miss. LEXIS 359 (Miss. 1950).

7. Directed verdict.

In an action for personal injuries sustained by a plaintiff when his automobile was struck from the rear by the defendant's automobile, where the evidence presented jury questions as to whether the defendant was negligent in driving at an excessive speed, or following another vehicle too closely, or in failing to have his vehicle under proper control, or whether the sole proximate cause of the collision was the manner in which the plaintiff's vehicle was driven into the intersection, the trial court erred in directing a verdict for plaintiff on the issue of liability. Buntyn v. Robinson, 233 Miss. 360, 102 So. 2d 126, 1958 Miss. LEXIS 391 (Miss. 1958).

8. Sufficiency of evidence.

Evidence was sufficient to support a tailgating conviction under this statute because an officer was able to articulate an objective basis for the stop by stating that defendant's vehicle was following another vehicle more closely than was reasonable and prudent, and defendant admitted that he was following a business associate's car too closely to a hotel because he was unfamiliar with the area and did not want to get separated. The conviction was not against the manifest weight of the evidence either. Nolan v. State, 182 So. 3d 484, 2016 Miss. App. LEXIS 21 (Miss. Ct. App. 2016).

Evidence was sufficient to support defendant's conviction for following too closely where the officer testified that defendant was traveling at about 50 miles per hour, there was only one car length between her and the car in front of her, she was tapping her brakes, and she was operating her vehicle under the influence of intoxicating liquor. Robinette v. State, 189 So. 3d 675, 2015 Miss. App. LEXIS 593 (Miss. Ct. App. 2015).

Evidence was sufficient to convict appellant of tailgating, under Miss. Code Ann. § 63-3-619(1), because a police officer made it clear from the start that appellant's following a sport-utility vehicle so closely was what drew his attention to appellant, and appellant offered no evidence to contradict the officer's testimony. Barrow v. State, 121 So. 3d 935, 2013 Miss. App. LEXIS 170 (Miss. Ct. App. 2013).

RESEARCH REFERENCES

ALR.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes. 72 A.L.R.2d 6.

Driver's failure to maintain proper distance from motor vehicle ahead. 85 A.L.R.2d 613.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 246.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 829, 838 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 266-277, 412.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 933-935, 1341-1524, 1531-2060.

19 Am. Jur. Trials 567, Handling a Rear-End Collision Case.

22 Am. Jur. Proof of Facts 43, Tailgating.

29 Am. Jur. Proof of Facts 2d 121, Negligence of Driver During Overtaking and Passing Maneuver.

CJS.

60A C.J.S., Motor Vehicles § 736, 737.

§ 63-3-621. Distance to be maintained between vehicle and traveling or parked fire apparatus or traveling or parked ambulance on emergency call.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. The driver of any vehicle other than an official emergency vehicle shall not follow any moving ambulance that is engaged in an emergency medical call closer than five hundred (500) feet, or park the vehicle within two hundred (200) feet of where the ambulance has stopped to pick up or deliver a patient or otherwise render care at the scene of an ambulance call.

HISTORY: Codes, 1942, § 8223; Laws, 1938, ch. 200; Laws, 2004, ch. 425, § 4, eff from and after July 1, 2004.

ARTICLE 15.

STARTING AND TURNING; SIGNALING.

Sec.	
63-3-701.	Starting of stopped, standing, or parked vehicle.
63-3-703.	Turning at intersections.
63-3-705.	Turning on curves or crests of grades.
63-3-707.	Requirements as to signalling of turns or stops.
63-3-709.	Manner of signalling generally.
63-3-711.	Hand and arm signals.

§ 63-3-701. Starting of stopped, standing, or parked vehicle.

No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

HISTORY: Codes, 1942, § 8191; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. Instructions.

Finding in favor of a trucking company and truck driver in a wrongful-death action brought by the decedent's widow was proper because the trial court did not err in refusing the widow's requested jury instructions under Miss. Code Ann. § 63-3-701. There was no evidence to support the instruction that the tractor-trailer could not be operated or moved safely at the time that it left the trucking company's lot. Utz v. Running & Rolling Trucking, Inc., 32 So. 3d 450, 2010 Miss. LEXIS 200 (Miss. 2010).

RESEARCH REFERENCES

ALR.

Liability for injury or damage caused by accidental starting up of parked motor vehicle. 16 A.L.R.2d 979.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 309.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 927.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 805, 1341-1524, 1531-2060.

CJS.

60A C.J.S., Motor Vehicles §§ 693, 694.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-703. Turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Both the approach for a right turn and the turn itself shall be made as close as practical to the right-hand curb or edge of the roadway.

(b) The approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered.

(c) The approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the center line of the street being entered upon leaving the intersection.

Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

HISTORY: Codes, 1942, § 8189; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Negligence.
3. Evidence.
4. Instructions.

1. In general.

Officer had probable cause to stop defendant's vehicle based on his observation of an improper turn and a missing headlight, notwithstanding the fact that the officer had received word from dispatch to be on the lookout for a vehicle matching that description. Scott v. City of Booneville, 962 So. 2d 698, 2007 Miss. App. LEXIS 185 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

Violation of this section [Code 1942, § 8189] may warrant a jury in finding that an automobile was being negligently operated. West v. Armstrong, 248 Miss. 617, 159 So. 2d 805, 1964 Miss. LEXIS 285 (Miss. 1964).

2. Negligence.

Motorist who turns into left hand-easternmost lane of southbound lane of 4 lane highway is not negligent as matter of law. Byrd v. F-S Prestress, 464 So. 2d 63, 1985 Miss. LEXIS 1899 (Miss. 1985).

In an action by a motorcyclist against a motorist for injuries resulting from an intersectional collision which occurred when the automobile driver made a left turn in front of the motorcycle approaching from the opposite direction immediately prior to the collision, evidence that the motorcycle struck the front bumper of the car to the left of center, together with the motorist's admission that his vehicle was at an angle with the direction of the highway from which he was turning, at the time of the collision, clearly established that the automobile driver made his left turn by "cutting the corner" before reaching the center of the intersection, in violation of this section [Code 1942, § 8189]. Lynch v. Suthoff, 220 So. 2d 593, 1969 Miss. LEXIS 1464 (Miss. 1969).

3. Evidence.

Testimony of accident reconstruction expert is admissible to prove the relative speed of vehicles, the angle of impact of vehicles, and what diverted their course. Hollingsworth v. Bovaird Supply Co., 465

So. 2d 311, 1985 Miss. LEXIS 1942 (Miss. 1985).

Allowing an investigating officer not an eyewitness to an accident, to give his opinion, in an action for injuries resulting from the collision, as to the place of impact and to depict this point on a map, was harmless error where the negligence of the defendant motorist was clearly established by other evidence. Lynch v. Suthoff, 220 So. 2d 593, 1969 Miss. LEXIS 1464 (Miss. 1969).

In an action for injuries sustained in an intersectional collision, it was proper for the investigating officer to testify as to the location of the vehicles at the time of his investigation, the location of the injured plaintiff, and the location of debris created by the impact, and equally proper for him to mark the location of these things on the map of the intersection. Lynch v. Suthoff, 220 So. 2d 593, 1969 Miss. LEXIS 1464 (Miss. 1969).

4. Instructions.

In an action for injuries sustained by a 16-year-old motorcyclist in an intersectional collision with a truck, the driver of which had, contrary to this section [Code 1942, § 8189], and a city ordinance, "cut the corner" in making a left turn, the court properly instructed that the truck driver was guilty of negligence which was a proximate, contributing cause of the collision. City of Jackson v. Reed, 233 Miss. 280, 102 So. 2d 342, 1958 Miss. LEXIS 559 (Miss. 1958).

In action by wife for damages for injuries sustained in automobile collision when husband's and defendant's cars, both going east, attempted to make left turn from different traffic lanes, refusal of defendant's instruction predicated upon theory that plaintiff's husband had no right to drive car in north lane of south half of highway and granting to plaintiff of instruction on facts of case under which jury found plaintiff's husband was in proper lane for left turn and defendant in wrong lane, was proper. Kouvarakis v. Hawver, 208 Miss. 697, 45 So. 2d 278, 1950 Miss. LEXIS 288 (Miss. 1950).

RESEARCH REFERENCES

ALR.

Liability for accident arising from failure of motorist to give signal for left turn between intersections. 39 A.L.R.2d 103.

Automobiles: liability for U-turn collisions. 53 A.L.R.4th 849.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 241-244.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 864 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 181-186.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 961-967, 1341-1524, 1531-2060.

7 Am. Jur. Proof of Facts 81, Left Turns.

7 Am. Jur. Proof of Facts 333, Lookout.

23 Am. Jur. Proof of Facts 709, Turning and Jackknifing of Commercial Vehicles.

24 Am. Jur. Proof of Facts 559, Right Turns.

24 Am. Jur. Proof of Facts 697, U-Turn Accidents.

25 Am. Jur. Proof of Facts 1, Motorcycle Accidents.

30 Am. Jur. Proof of Facts 639, Bicycle Accidents.

35 Am. Jur. Proof of Facts 2d 405, Negligent Left Turn of Motor Vehicle.

CJS.

60A C.J.S., Motor Vehicles §§ 863 et seq.

§ 63-3-705. Turning on curves or crests of grades.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of the grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

HISTORY: Codes, 1942, § 8190; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.
Automobiles: liability for U-turn collisions. 53 A.L.R.4th 849.

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 241-244.
8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 872-874.
24 Am. Jur. Proof of Facts 697, U-Turn Accidents.
35 Am. Jur. Proof of Facts 2d 405, Negligent Left Turn of Motor Vehicle.

CJS.
60A C.J.S., Motor Vehicles § 706.

§ 63-3-707. Requirements as to signalling of turns or stops.

No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by such movement or after giving an appropriate signal in the manner provided in this article in the event any other vehicle may be affected by such movement.

A signal of intention to turn right or left shall be given continuously for a reasonable distance before turning.

No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in this article to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

HISTORY: Codes, 1942, § 8192; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Negligence.
3. Contributory negligence.
4. Instructions.
5. Searches and seizures.
6. Miscellaneous.

1. In general.

A motorist is not only under a duty to keep a proper lookout and be on the alert for other vehicles using the highway, but is also under duty not to turn his vehicle from a direct course upon the highway unless such movement can be made with reasonable safety, and then only after giving an appropriate signal by hand, arm or other signal device, in the event that any other vehicle might be affected by such movement. Sohio Petroleum Co. v. Fowler, 231 Miss. 72, 94 So. 2d 350, 1957 Miss. LEXIS 490 (Miss. 1957).

Where a driver of an oil truck turned to the left on a highway before making a right turn and he was hit by a truck attempting to pass, the driver of the oil truck was under a duty to give the proper sign for stopping, or turning right or left. American Creosote Works, Inc. v. Rose Bros., Inc., 211 Miss. 173, 51 So. 2d 220, 1951 Miss. LEXIS 345 (Miss. 1951).

2. Negligence.

Jury verdict defied all logic, as the evidence presented at trial established that the driver was negligent as a matter of law for failing to maintain a proper lookout and to yield the right-of-way by executing a turn across the insured's lane of travel. A verdict should have been returned in favor of the insured because the violation of said statutory duties by the driver was the unequivocal proximate cause of the insured's injury; even if the driver was not negligent per se, the facts presented at trial unconditionally demonstrated that the collision was the result of her negligence and the trial court committed reversible error in failing to apply Miss. R. Civ. P. 50, and by denying the insured's motion for judgment notwithstanding the verdict. State Farm Auto Ins. Cos. v. Davis, 887 So. 2d 192, 2004 Miss. App. LEXIS 1065 (Miss. Ct. App. 2004).

That a motorist actuated a stop signal on the automobile by applying the brake does not necessarily exonerate the motorist from a charge of negligence toward a following car. Box v. Swindle, 306 F.2d 882, 1962 U.S. App. LEXIS 4242 (5th Cir. Miss. 1962).

A motorist who signaled an intention to stop may be found negligent if there was insufficient time and distance to bring a following car to a halt. Box v. Swindle, 306 F.2d 882, 1962 U.S. App. LEXIS 4242 (5th Cir. Miss. 1962).

Code 1972 § 63-3-611(2)(a) is concerned not only with oncoming traffic but also with traffic to the rear, and if a driver cannot see to the rear, he cannot comply with the requirements of Code 1972 § 63-3-707. Gates v. Murphree, 286 So. 2d 291, 1973 Miss. LEXIS 1316 (Miss. 1973).

The fact that a motorist, who had previously given a lawful notice that she was reducing the speed of her vehicle, failed to signal of her ultimate intention to make a right turn, this was not a proximate contributing cause of the collision which resulted when she was struck in the rear by the plaintiff's automobile which was following too closely, being driven at a high, excessive and unlawful rate of speed, at a time when its driver was not maintaining a proper lookout ahead, and did not have the vehicle under control. Callender v. Cockrell, 217 So. 2d 643, 1969 Miss. LEXIS 1580 (Miss. 1969).

3. Contributory negligence.

Plaintiff's testimony that he observed defendant's approaching vehicle until it was about 150 feet behind him and although he realized it was traveling at a faster speed and overtaking him, he drove about 15 seconds from the time he last looked before he made his left turn, that by merely glancing in his rear view mirror he could have ascertained the location of the defendant's car before he began his left turn, and that he relied completely on his blinker signal to keep traffic behind him from coming around him, established that plaintiff was guilty of contributory negligence. Stockton v. Lamberth, 278 So. 2d 423, 1973 Miss. LEXIS 1440 (Miss. 1973).

Failure to give a signal at a reasonable distance of intention to make a left turn is contributory negligence. Gore v. Patrick, 246 Miss. 715, 150 So. 2d 169, 1963 Miss. LEXIS 497 (Miss. 1963).

A motorist was guilty of contributory negligence who, without giving any warning signal of any kind to indicate her intention, had turned from her right lane of traffic and was proceeding across the left or oncoming traffic lane of the highway to enter a driveway when she was struck by defendant's automobile, which, at the time of the motorist's turn, had been approaching some 40 to 60 feet away. Sohio Petroleum Co. v. Fowler, 231 Miss. 72, 94 So. 2d 350, 1957 Miss. LEXIS 490 (Miss. 1957).

4. Instructions.

A plaintiff motorist was entitled to an instruction that a preceding motorist was negligent as a matter of law under § 63-3-707, which provides that a driver should not turn a vehicle from a highway unless the turn can be made with reasonable safety, where the preceding driver admitted that he turned his vehicle to the left out of his lane of traffic without first looking to see whether the plaintiff was following him, and the court's refusal to give this requested instruction was reversible error. Conner v. Harris, 624 So. 2d 482, 1993 Miss. LEXIS 304 (Miss. 1993).

Minor who enters upon an adult activity such as the operation of a motor vehicle must exercise a commensurate degree of responsibility, and will be held to adult standard in determining whether their conduct while engaging in such adult activity is negligent. Davis v. Waterman, 420

So. 2d 1063, 1982 Miss. LEXIS 2232 (Miss. 1982).

In a personal injury action arising out of an automobile accident at an intersection in which the defendant was struck by the plaintiff's automobile as he made a left turn across the plaintiff's traffic lane, the trial court erred in giving an instruction that the defendant was entitled to a verdict if the jury believed that the accident had been proximately caused by the negligence of a truck driver who had allegedly indicated to the defendant that he could safely cross the plaintiff's traffic lane; the defendant did not have the legal right to rely on the truck driver and had a duty to ascertain whether he could cross the traffic lane with reasonable safety. Boyd v. Smith, 390 So. 2d 994, 1980 Miss. LEXIS 2155 (Miss. 1980).

Where the evidence made a jury issue as to whether defendant was guilty of negligence in failing to give a signal indicating his intention to turn left for a reasonable distance before turning, and in turning his vehicle from a direct course upon the highway when such movement could not be made with reasonable safety, the trial court should not have granted defendant's motion for a peremptory instruction. Cronier v. Denson, 198 So. 2d 252, 1967 Miss. LEXIS 1260 (Miss. 1967).

In a wrongful death action arising out of a collision of defendant's automobile with a bicycle ridden by a nine-year-old child upon a highway, the trial court did not err in instructing that the rider of a bicycle or other vehicle along a public highway should not turn from a direct course unless such movement could be made with reasonable safety and then only after giving an appropriate signal, and the signal for a left turn should be given by extending the hand and arm horizontally. Moak v. Black, 230 Miss. 337, 92 So. 2d 845, 1957 Miss. LEXIS 376 (Miss. 1957).

The trial court properly refused defendant a peremptory instruction where, in an action for a personal injury sustained when the truck in which plaintiff was a passenger was struck by defendant's automobile while undertaking to turn from the right lane of traffic across the oncoming traffic lane to enter a driveway, the jury was warranted in finding that the truck driver's movements were consistent with reasonable safety as required by this section. [Code 1942, § 8192], and that, in view of defendant's admission that although she saw the truck slowing down for one-half mile and thought he was going to turn in to the driveway, she did not slow down, but continued to operate her automobile at 50 miles per hour, the contributing, if not the sole, cause of accident was defendant's negligence. Hamilton v. McCry, 229 Miss. 481, 91 So. 2d 564, 1956 Miss. LEXIS 629 (Miss. 1956).

In action for damages to automobile arising out of ramming by truck from rear, there being no controversy in record that car was equipped with signal light in rear in good order, instruction for defendant that person driving upon highway is required by law, before stopping or suddenly decreasing the speed of his automobile, to give proper signal of such intention, and if jury believe from evidence in case that plaintiff so stopped or decreased his speed without giving such proper signal, then jury must find plaintiff was negligent is reversibly erroneous and cannot be cured by other instructions in conflict with it. Wilburn v. Gordon, 209 Miss. 27, 45 So. 2d 844, 1950 Miss. LEXIS 359 (Miss. 1950).

5. Searches and seizures.

In a felony fleeing case, an argument that an officer lacked probable cause to make a traffic stop was rejected because the officer testified that he personally observed defendant make a right turn onto a state highway without signaling while traffic was present. Moreover, defendant admitted to committing the offense. Johnson v. State, 228 So. 3d 933, 2017 Miss. App. LEXIS 112 (Miss. Ct. App.), cert. denied, 229 So. 3d 120, 2017 Miss. LEXIS 379 (Miss. 2017).

Defendant was legally stopped under the Fourth Amendment, U.S. Const. Amend. IV, and Miss. Const. Art. III, § 23 as: (1) he failed to use his turn signal and violated Miss. Code Ann. § 63-3-707, even though there was no imminent threat of a collision between his vehicle and an officer's vehicle that was traveling at a safe distance behind defendant's vehicle; (2) the subsequent searches of defendant and his vehicle were lawful; (3) defendant was arrested for driving with a suspended license; (4) the glass pipes were found in a search incident to defendant's arrest; and (5) the inventory search of defendant's vehicle, during which the methamphetamine was discovered, was conducted according to police department policy and was limited to the areas of the vehicle where defendant's property could reasonably be expected to be found.. Melton v. State, 118 So. 3d 605, 2012 Miss. App. LEXIS 618 (Miss. Ct. App. 2012), cert. denied, 117 So. 3d 330, 2013 Miss. LEXIS 375 (Miss. 2013).

6. Miscellaneous.

In an action by a passenger for injuries sustained when the taxicab, which was stopped upon a highway, was struck from behind by a motorist, in view of the uncontradicted testimony that when the motorist first saw the taxicab it had already stopped and its headlights and taillights were burning, the trial court erred in submitting to the jury the issue of the alleged negligence of the taxicab driver in stopping upon the highway without giving any warning by hand signals, arm signals, blinker lights or other signals. Snowden v. Skipper, 230 Miss. 684, 93 So. 2d 834, 1957 Miss. LEXIS 410 (Miss. 1957).

RESEARCH REFERENCES

ALR.

Liability for accident arising from motorist's failure to give signal for right turn. 38 A.L.R.2d 143.

Duty and liability as to signaling following driver to pass or giving him warning of approaching danger. 48 A.L.R.2d 252.

Liability for injury occasioned by backing of motor vehicle in public street or highway. 63 A.L.R.2d 5.

Liability for injury occasioned by backing of motor vehicle from private premises into public street or highway. 63 A.L.R.2d 108.

Liability for injury or damage occasioned by backing of motor vehicle within private premises. 63 A.L.R.2d 184.

Automobiles: duty and liability with respect to giving audible signal at intersection. 21 A.L.R.3d 268.

Negligence or contributory negligence of motorist in failing to proceed in accordance with turn signal given. 84 A.L.R.4th 124.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 227, 242, 279, 280.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 830, 875 et seq.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 961-963, 1341-1524, 1531-2060.

7 Am. Jur. Proof of Facts 81, Left Turns.

24 Am. Jur. Proof of Facts 559, Right Turns.

24 Am. Jur. Proof of Facts 697, U-Turn Accidents.

CJS.

60A C.J.S., Motor Vehicles §§ 701, 702, 743.

§ 63-3-709. Manner of signalling generally.

The signals required in this article shall be given either by means of the hand and arm or by a signal lamp or signal device of a type approved by the department. When a vehicle is so constructed or loaded that a hand and arm signal would not be visible both to the front and rear of such vehicle, then said signals must be given by such a lamp or device.

HISTORY: Codes, 1942, § 8193; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

A motorist is not only under a duty to keep a proper lookout and be on the alert for other vehicles using the highway, but is also under duty not to turn his vehicle from a direct course upon the highway unless such movement can be made with reasonable safety, and then only after giving an appropriate signal by hand, arm or other signal device, in the event that any other vehicle might be affected by such movement. Sohio Petroleum Co. v. Fowler, 231 Miss. 72, 94 So. 2d 350, 1957 Miss. LEXIS 490 (Miss. 1957).

RESEARCH REFERENCES

ALR.

Negligence or contributory negligence of motorist in failing to proceed in accordance with turn signal given. 84 A.L.R.4th 124.

Am. Jur.

7 Am. Jur. Proof of Facts 81, Left Turns.

24 Am. Jur. Proof of Facts 559, Right Turns.

§ 63-3-711. Hand and arm signals.

All signals given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

1. Left turn – hand and arm extended horizontally.
2. Right turn – hand and arm extended upward or moved with a sweeping motion from the rear to the front.
3. Stop or decrease speed – hand and arm extended downward.

HISTORY: Codes, 1942, § 8194; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instructions.

1. In general.

Minor who enters upon an adult activity such as the operation of a motor vehicle must exercise a commensurate degree of responsibility, and will be held to adult standard in determining whether their conduct while engaging in such adult activity is negligent. Davis v. Waterman, 420 So. 2d 1063, 1982 Miss. LEXIS 2232 (Miss. 1982).

2. Instructions.

In a wrongful death action arising out of a collision between defendant's automobile and a bicycle ridden by a nine-year-old child upon the highway, the trial court properly instructed that the rider of a bicycle along a public highway should not turn from a direct course unless such movement could be made with reasonable safety and then only after giving the appropriate signal, and the signal for a left turn should be given by extending the hand and arm horizontally. Moak v. Black, 230 Miss. 337, 92 So. 2d 845, 1957 Miss. LEXIS 376 (Miss. 1957).

RESEARCH REFERENCES

ALR.

Duty and liability as to signaling following driver to pass or giving him warning of approaching danger. 48 A.L.R.2d 252.

Negligence or contributory negligence of motorist in failing to proceed in accordance with turn signal given. 84 A.L.R.4th 124.

ARTICLE 17.

RIGHT-OF-WAY.

Sec.
63-3-801. Vehicle approaching intersection; vehicles entering intersection at same time.
63-3-803. Vehicle turning left at intersection.
63-3-805. Vehicle entering through highway.
63-3-807. Vehicle entering or crossing highway from private road or driveway.
63-3-809. Procedure upon approach of authorized emergency vehicles; procedure upon approaching certain stationary vehicles using authorized flashing lights; duty of driver of authorized emergency, recovery or utility service vehicle.

§ 63-3-801. Vehicle approaching intersection; vehicles entering intersection at same time.

(1) Except as may otherwise be provided in this article, the driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

(2) Except as may otherwise be provided in this article, when two vehicles enter an intersection from different highways at the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

HISTORY: Codes, 1942, § 8195; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Right-of-way, generally.
3. Instructions.
4. Directed verdict.

1. In general.

Code 1942, § 8195 merely prescribes the general rule as to an ordinary intersection and is inapplicable to one with traffic lights and signals. Gates v. Green, 214 So. 2d 828, 1968 Miss. LEXIS 1337 (Miss. 1968).

The statutory rule announced in subsection (2) of this section [Code 1942, § 8195] is inapplicable to the intersection of an existing public road and a new highway under construction which is not yet open for general vehicular traffic. Carlisle v. Cobb Bros. Constr. Co., 238 Miss. 681, 119 So. 2d 918, 1960 Miss. LEXIS 457 (Miss. 1960).

Right-of-way statutes have no legal application to traffic on private property. Vaughan v. Lewis, 236 Miss. 792, 112 So. 2d 247, 1959 Miss. LEXIS 378 (Miss. 1959).

Violation of statutory rules of the road is negligence per se. Vaughan v. Lewis, 236 Miss. 792, 112 So. 2d 247, 1959 Miss. LEXIS 378 (Miss. 1959).

The statute does not require the driver of a vehicle who has already entered onto an intersection with a through highway to yield the right of way to an approaching vehicle which has neither entered the intersection nor approached so closely thereto from the through highway as to constitute an immediate hazard, and this is likewise true as to a vehicle about to enter or cross a through highway from a private road or driveway. Jones v. Carter, 192 Miss. 603, 7 So. 2d 519, 1942 Miss. LEXIS 55 (Miss. 1942).

2. Right-of-way, generally.

Unless priority is otherwise given, the

vehicle first entering an intersection has the right of way. Vaughan v. Lewis, 236 Miss. 792, 112 So. 2d 247, 1959 Miss. LEXIS 378 (Miss. 1959).

If two vehicles arrive at an intersection at the same time, it is the duty of the driver to yield to the other driver who is on the right. Herring v. Hart, 225 Miss. 115, 82 So. 2d 710, 1955 Miss. LEXIS 564 (Miss. 1955).

Where an automobile was first to reach an intersection, a driver of a truck approaching from the other street had the duty to yield the right of way to the first automobile and if necessary, to stop so as to permit him to pass through the intersection without interference. Jefferson v. Pinson, 219 Miss. 427, 69 So. 2d 234, 1954 Miss. LEXIS 350 (Miss. 1954).

3. Instructions.

Finding in favor of a trucking company and truck driver in a wrongful-death action brought by the decedent's widow was proper because the trial court did not err in refusing the widow's requested jury instructions under Miss. Code Ann. § 63-3-801 since the record contained no evidence to show that the truck driver or decedent were in close proximity to each other at an intersection when the truck driver entered the highway. The accident occurred two and one-half miles after the truck driver had entered the highway from the trucking company's lot and had been traveling in the right-hand lane. Utz v. Running & Rolling Trucking, Inc., 32 So. 3d 450, 2010 Miss. LEXIS 200 (Miss. 2010).

A party is not entitled to an instruction that one should yield to the car first entering an intersection where the statute requires stopping before entering the intersection in response to a red signal light, and Code 1942, § 8195 merely prescribes the general rule as to an ordinary intersection and is inapplicable to one with traffic lights and signals. Gates v. Green, 214 So. 2d 828, 1968 Miss. LEXIS 1337 (Miss. 1968).

Since common-law principles of negligence applied to an action arising out of a motor vehicle collision at an intersection of an existing public road, and a new highway under construction which was not open to general vehicular traffic, the court committed reversible error in giving the favored driver instruction which is solely statutory in origin. Carlisle v. Cobb Bros. Constr. Co., 238 Miss. 681, 119 So. 2d 918, 1960 Miss. LEXIS 457 (Miss. 1960).

A motorist who approached an intersection with the signal light flashing red in her direction, and failed to stop before entering the intersection, was not entitled to an instruction under this section [Code 1942, § 8195], providing that the driver of a vehicle approaching an intersection shall yield the right of way to vehicle which has entered the intersection from a different highway. Bates v. Walker, 232 Miss. 804, 100 So. 2d 611, 1958 Miss. LEXIS 333 (Miss. 1958).

The action of the trial court in a manslaughter prosecution in instructing the jury in reference to the so-called "rules of the road" as contained in previous repealed section (Code 1930, § 5574) was not error as against the contention that such rules had no application in a criminal case, since the jury was entitled to know the relative rights and duties of the driver of the truck and of the driver of the automobile in order to be able to determine who was at fault when the driver of the automobile was killed in a collision. Turner v. State, 183 Miss. 658, 183 So. 522, 1938 Miss. LEXIS 279 (Miss. 1938).

4. Directed verdict.

In an action for personal injuries sustained by a plaintiff when his automobile was struck from the rear by the defendant's automobile, where the evidence presented jury questions as to whether the defendant was negligent in driving at an excessive speed, or following another vehicle too closely, or in failing to have his vehicle under proper control, or whether the sole proximate cause of the collision was the manner in which the plaintiff's vehicle was driven into the intersection, the trial court erred in directing a verdict for plaintiff on the issue of liability. Buntyn v. Robinson, 233 Miss. 360, 102 So. 2d 126, 1958 Miss. LEXIS 391 (Miss. 1958).

RESEARCH REFERENCES

ALR.

Right of motorist on through, favored, or arterial street or highway to proceed where lateral view at intersection is obstructed by physical obstacle. 59 A.L.R.2d 1202.

Duty and liability of vehicle drivers approaching intersection of one-way street with other street. 62 A.L.R.2d 275.

Motorist's liability for collision at intersection of ordinary and arterial highway as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal. 74 A.L.R.2d 242.

Comment Note. – What is a street or highway intersection within traffic rules. 7 A.L.R.3d 1204.

Applicability of last clear chance doctrine to collisions between motor vehicles crossing at intersection. 20 A.L.R.3d 124.

Applicability of last clear chance doctrine to intersectional collision between motor vehicles meeting from opposite directions. 20 A.L.R.3d 287.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 281 et seq.

Automobiles and Highway Traffic §§ 865 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 141 et seq.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 898, 899, 1341-1524, 1941-1961.

7 Am. Jur. Proof of Facts 333, Lookout.

30 Am. Jur. Proof of Facts 639, Bicycle Accidents.

CJS.

60A C.J.S., Motor Vehicles §§ 843 et seq.

61A C.J.S., Motor Vehicles § 1755.

Practice References.

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Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

Reiff, Drunk Driving and Related Vehicular Offenses, Third Edition (Michie).

§ 63-3-803. Vehicle turning left at intersection.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. However, said driver, having so yielded and having given a signal when and as required by Article 15, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn.

HISTORY: Codes, 1942, § 8196; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Negligence.
3. Evidence.
4. Questions for jury.
5. Instructions.
6. Miscellaneous.

1. In general.

One who had turned left at an intersection while the traffic signal was red, pursuant to a green arrow signal, and who had traversed almost the entire distance of the intersection before another car, when the signal turned from red to green, had entered the intersection, is not required to yield the right of way. Jackson Yellow Cab Co. v. Alexander, 246 Miss. 268, 148 So. 2d 674, 1963 Miss. LEXIS 441 (Miss. 1963).

2. Negligence.

Jury verdict defied all logic, as the evidence presented at trial established that the driver was negligent as a matter of law for failing to maintain a proper lookout and to yield the right-of-way by executing a turn across the insured's lane of travel. A verdict should have been returned in favor of the insured because the violation of said statutory duties by the driver was the unequivocal proximate cause of the insured's injury; even if the driver was not negligent per se, the facts presented at trial unconditionally demonstrated that the collision was the result of her negligence and the trial court committed reversible error in failing to apply Miss. R. Civ. P. 50, and by denying the insured's motion for judgment notwithstanding the verdict. State Farm Auto Ins. Cos. v. Davis, 887 So. 2d 192, 2004 Miss. App. LEXIS 1065 (Miss. Ct. App. 2004).

In an action by a police officer for personal injuries sustained when his motorcycle struck a left turning automobile which had come to a stop 3 or 4 feet across the center line into the officer's lane, § 63-3-803 was a more appropriate basis, than § 63-3-603, for an instruction that violation thereof constituted negligence. McRee v. Raney, 493 So. 2d 1299, 1986 Miss. LEXIS 2617 (Miss. 1986).

In an action by a motorcyclist against a motorist for injuries resulting from an intersectional collision, testimony of the automobile driver that he did not see the motorcycle approaching from the opposite direction until the instant of collision which occurred when the automobile turned left in front of the motorcycle, together with the acknowledged fact that the intersection was well lighted, indicated that the motorist was negligent in making a left turn without making sure that he could do so in safety, and failing to keep a proper lookout for approaching traffic. Lynch v. Suthoff, 220 So. 2d 593, 1969 Miss. LEXIS 1464 (Miss. 1969).

3. Evidence.

Testimony of accident reconstruction expert is admissible to prove the relative speed of vehicles, the angle of impact of vehicles, and what diverted their course. Hollingsworth v. Bovaird Supply Co., 465 So. 2d 311, 1985 Miss. LEXIS 1942 (Miss. 1985).

Allowing an investigating officer, not an eyewitness to an accident, to give his opinion, in an action for injuries resulting from the collision, as to the place of impact and to depict this point on a map, was harmless error where the negligence of the defendant motorist was clearly established by other evidence. Lynch v. Suthoff, 220 So. 2d 593, 1969 Miss. LEXIS 1464 (Miss. 1969).

In an action for injuries sustained in an intersectional collision, it was proper for the investigating officer to testify as to the location of the vehicles at the time of his investigation, the location of the injured plaintiff, and the location of debris created by the impact, and equally proper for him to mark the location of these things on the map of the intersection. Lynch v. Suthoff, 220 So. 2d 593, 1969 Miss. LEXIS 1464 (Miss. 1969).

4. Questions for jury.

In action for injuries sustained by a 16-year-old motorcyclist in an intersectional collision with a truck, the driver of which had, contrary to Code 1942, § 8189(a), and a city ordinance, "cut the corner" in making a left turn, the question of whether the truck driver's negligence was a proximate, contributing cause of the collision was for the jury. City of Jackson v. Reed, 233 Miss. 280, 102 So. 2d 342, 1958 Miss. LEXIS 559 (Miss. 1958).

5. Instructions.

In a personal injury action arising out of an automobile accident at an intersection in which the defendant was struck by the plaintiff's automobile as he made a left turn across the plaintiff's traffic lane, the trial court erred in giving an instruction that the defendant was entitled to a verdict if the jury believed that the accident had been proximately caused by the negligence of a truck driver who had allegedly indicated to the defendant that he could safely cross the plaintiff's traffic lane; the defendant did not have the legal right to rely on the truck driver and had a duty to ascertain whether he could cross the traffic lane with reasonable safety. Boyd v. Smith, 390 So. 2d 994, 1980 Miss. LEXIS 2155 (Miss. 1980).

An instruction that the operator of a vehicle continuing its course is bound to have his vehicle under such control that another vehicle, entering the intersection first, can safely make the left turn, is improper as making such operator the insurer of the other's safety without regard to whether such other had at the time a right to turn across the traffic lane, and without regard to whether or not he was in such close proximity to the intersection as to constitute an immediate hazard. Greenville Ice & Coal Co. v. Brown, 236 Miss. 253, 109 So. 2d 858, 1959 Miss. LEXIS 315 (Miss. 1959).

An instruction that the driver of an oncoming truck who saw a car signalling at a controlled-traffic intersection for a left turn but continued on a green light was bound to know that the car's driver contemplated turning, is objectionable as ignoring whatever right the truck driver had to assume that the car would wait until the traffic lane was clear. Greenville Ice & Coal Co. v. Brown, 236 Miss. 253, 109 So. 2d 858, 1959 Miss. LEXIS 315 (Miss. 1959).

In an action for injuries sustained by 16-year-old motorcyclist in an intersectional collision with a truck, the driver of which had, contrary to Code 1942, § 8189(a), and a city ordinance, "cut the corner" in making a left turn, instructions permitting the jury to find that the motorcycle had already entered the intersection at the time of the left turn, and was readily visible to the truck driver, was not reversible error, where, under conflicting evidence, the jury could, and evidently did, reject the version of defendant's witnesses. City of Jackson v. Reed, 233 Miss. 280, 102 So. 2d 342, 1958 Miss. LEXIS 559 (Miss. 1958).

6. Miscellaneous.

The action of a truckdriver, whose view of the road ahead was admittedly obstructed by a preceding pulpwood truck, who pulled into the left lane of traffic in order to make a turn into a county road was guilty of violating this section [Code 1942, § 8196] and should have stopped or slowed down until the pulpwood truck ceased to obstruct his view. Necaise v. Blalock, 210 So. 2d 637, 1968 Miss. LEXIS 1499 (Miss. 1968).

In an action for injuries sustained when plaintiff's truck was struck by defendant's truck which was making a left turn in front of plaintiff's vehicle to enter an intersecting county road, where the defendant's own testimony showed that he had failed to maintain a proper lookout, and was negligent in failing to comply with this section [Code 1942, § 8196], the jury's verdict for defendant was contrary to the overwhelming weight of the evidence. Cobb v. Williams, 228 Miss. 807, 90 So. 2d 17, 1956 Miss. LEXIS 568 (Miss. 1956).

RESEARCH REFERENCES

ALR.

Comment Note. – What is a street or highway intersection within traffic rules. 7 A.L.R.3d 1204.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 285, 286.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 144, 145, 182-186.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 898, 899, 1341-1524, 1941-1961.

7 Am. Jur. Proof of Facts 81, Left Turns.

7 Am. Jur. Proof of Facts 333, Lookout.

30 Am. Jur. Proof of Facts 639, Bicycle Accidents.

CJS.
60A C.J.S., Motor Vehicles §§ 865-868.

§ 63-3-805. Vehicle entering through highway.

The driver of a vehicle shall stop as required by this chapter at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard. However, said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.

The driver of a vehicle shall likewise stop in obedience to a stop sign as required by this chapter at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

HISTORY: Codes, 1942, § 8197; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Construction.
4. What constitutes immediate hazard.
5. Negligence — In general.
6. —Contributory negligence.
7. —Comparative negligence.
8. Questions for jury.
9. Instructions.
10. Negligence not found.

1. In general.

Record showed substantial evidence that a jury could reasonably base their verdict on in favor of the truck driver in a car accident; the jury found that the car driver had time to react at the intersection. Phan v. Denley, 915 So. 2d 504, 2005 Miss. App. LEXIS 901 (Miss. Ct. App. 2005).

As the driver failed to reduce his speed and keep a lookout as he approached an intersection that he knew was dangerous, the trial court did not err in assessing 54 percent liability against him. Classic Coach, Inc. v. Johnson, 823 So. 2d 517, 2002 Miss. LEXIS 243 (Miss. 2002), amended, 2003 Miss. LEXIS 81 (Miss. Feb. 20, 2003).

Although this section places a burden on a driver to yield the right-of-way before entering a through highway, and further provides that when a STOP sign is present the driver is to observe the sign, it does not mandate that the state or a county place a STOP sign at an intersection. Jones v. Mississippi DOT, 744 So. 2d 256, 1999 Miss. LEXIS 201 (Miss. 1999).

The general rule is that a vehicle which first enters and occupies the intersection has the right of way. Tant v. Fairchild, 228 Miss. 126, 87 So. 2d 78, 1956 Miss. LEXIS 495 (Miss. 1956).

The general rule that the first vehicle in intersection has the right of way does not relieve a truck owner from the duty of having a flagman present to direct and stop traffic at busy intersection where the truck carried a huge cargo and was very slow in going through the intersection. Tant v. Fairchild, 228 Miss. 126, 87 So. 2d 78, 1956 Miss. LEXIS 495 (Miss. 1956).

2. Applicability.

Employee was required to obey the stop

sign and then proceed onto the highway intersection only after yielding to automobiles that were approaching and were close enough to be considered an immediate hazard; however, the mother failed to keep a proper lookout when approaching the intersection, and a reasonable person would have recognized the need to slow the vehicle when approaching the intersection, and the employee was unable to avoid an accident. Clark v. Clark, 863 So. 2d 1027, 2004 Miss. App. LEXIS 38 (Miss. Ct. App. 2004).

Liability for collision resulting when automobile proceeding east on 4 lane highway collides with truck which is blocking eastbound lanes while preparing to turn left onto westbound lanes is determined under statute governing right of way at intersection (§ 63-3-805), not under change of lane statute (§ 63-3-603). Mills v. Nichols, 467 So. 2d 924, 1985 Miss. LEXIS 2017 (Miss. 1985).

3. Construction.

Injured party's interpretation of Miss. Code Ann. § 63-3-805, was incorrect because the injured party seemed to contend that the uncontradicted proof that the injured party was traveling on the through highway at the time of the accident necessarily establishes the driver's negligence for the accident, but because the driver testified that the injured party's vehicle was not in sight just moments before the collision and the driver made reference to the degree of damage inflicted on the driver's truck as evidence tending to show that the injured party's vehicle was speeding, there was evidence that the injured party was speeding, which supported an inference that the injured party's speeding was the cause of the collision; thus, the jury verdict in favor of the driver and against the injured party was not against the weight of the evidence. Redmond v. Breakfield, 840 So. 2d 828, 2003 Miss. App. LEXIS 235 (Miss. Ct. App. 2003).

A motorist either at, or when entering, an intersection to cross a through highway has no right of way, and must yield to another car farther from the intersection but yet so close as to present a hazardous situation. Walton v. Owens, 244 F.2d 383, 1957 U.S. App. LEXIS 3100 (5th Cir. Miss. 1957).

The standard of care required of a motorist backing a vehicle into a public street is defined in this section [Code 1942, § 8197]. Ramage v. Kelly, 253 Miss. 582, 176 So. 2d 324, 1965 Miss. LEXIS 1016 (Miss. 1965).

The statute does not require the driver of a vehicle who has already entered onto an intersection with a through highway to yield the right of way to an approaching vehicle which has neither entered the intersection nor approached so closely thereto from the through highway as to constitute an immediate hazard, and this is likewise true as to a vehicle about to enter or cross a through highway from a private road or driveway. Jones v. Carter, 192 Miss. 603, 7 So. 2d 519, 1942 Miss. LEXIS 55 (Miss. 1942).

The statute requires that motorists must stop and look at the intersection of a highway with a through highway. Avent v. Tucker, 188 Miss. 207, 194 So. 596, 1940 Miss. LEXIS 28 (Miss. 1940).

No driver of an automobile is absolved from exercising care and diligence when proceeding upon a crossing which is much traveled and at which people are known to travel at a high rate of speed, notwithstanding such driver may have stopped at a stop sign before entering into the intersection. Avent v. Tucker, 188 Miss. 207, 194 So. 596, 1940 Miss. LEXIS 28 (Miss. 1940).

4. What constitutes immediate hazard.

Where plaintiff's automobile which was approaching intersection in highway was only sixty to one hundred feet away, at a time defendant's truck entered intersection, plaintiff's automobile constituted an immediate hazard within this section [Code 1942, § 8197]. Meo v. Miller, 227 Miss. 11, 85 So. 2d 568, 1956 Miss. LEXIS 651 (Miss. 1956).

5. Negligence — In general.

Expert witness testified that a driver was at fault for pulling out in front of a truck, and the driver's negligence was the sole proximate cause of the accident; substantial evidence supported the verdict that the driver was negligent for disregarding an immediate hazard. Etheridge v. Harold Case & Co., 960 So. 2d 474, 2006 Miss. App. LEXIS 623 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 383 (Miss. 2007).

Failure of motorist on unfavored street to continue to look for approaching vehicles after having stopped at stop sign and looked at intersection of highway with through highway constitutes negligence; motorist who claims to have looked and failed to see vehicles in intersection or approaching so closely as to constitute immediate hazard is guilty of negligence as matter of law. Dogan v. Hardy, 587 F. Supp. 967, 1984 U.S. Dist. LEXIS 15383 (N.D. Miss. 1984).

Defendant motorist who drove to within a car's length of a highway stop sign located 40 feet from paved portion of intersecting road, looked to her right and left and did not see any traffic approaching, remained motionless quite a while and then proceeded upon the highway without again looking to her right or left was guilty of negligence. Campbell v. Schmidt, 195 So. 2d 87, 1967 Miss. LEXIS 1436 (Miss. 1967).

6. —Contributory negligence.

There was sufficient evidence to find that a driver was contributorily negligent including driver's duty of common sense under Miss. Code Ann. § 63-3-805, the fact that a good portion of the bus was past the center line before colliding with the car, and the disputed testimony with regard to the amount of time between when the bus pulled into the road and when the bus arrived at the point of collision. Callahan v. Ledbetter, 992 So. 2d 1220, 2008 Miss. App. LEXIS 547 (Miss. Ct. App. 2008).

Court's finding of contributory negligence on the part of plaintiff was proper where defendant bus driver testified that he came to a complete stop at the stop sign, he looked both ways for oncoming traffic before entering the intersection, both parties had a clear unobstructed view of the intersection as they approached from their respective directions, and defendant's bus was hit by plaintiff's truck, thus indicating a lack of evasive action on the part of plaintiff. Thompson ex rel. Thompson v. Lee County Sch. Dist., 925 So. 2d 57, 2006 Miss. LEXIS 50 (Miss. 2006).

Plaintiff was not guilty of contributory negligence where it appeared that while traveling on his side of a city street, without excessive speed, he was struck by an automobile driven by the defendant, who, upon entering the intersection, had seen the plaintiff's automobile approaching at such a distance as to constitute an immediate hazard, but, without looking again, continued across the intersection. Wells v. Bennett, 229 Miss. 135, 90 So. 2d 199, 1956 Miss. LEXIS 594 (Miss. 1956).

Since defendant's own admission showed that he was guilty of negligence in proceeding into a through street without continuing to look for the hazard of plaintiff's approaching automobile, plaintiff was entitled to a peremptory instruction on the issue of liability, and the question of whether plaintiff was guilty of contributory negligence was for the jury, and, after finding plaintiff guilty, the jury would only diminish the amount of damages to be awarded. Wells v. Bennett, 229 Miss. 135, 90 So. 2d 199, 1956 Miss. LEXIS 594 (Miss. 1956).

The doctrine of contributory negligence applies to a suit brought against a driver who allegedly violated this section [Code 1942, § 8197]. Baird v. Harrington, 202 Miss. 112, 30 So. 2d 82, 1947 Miss. LEXIS 247 (Miss. 1947).

7. —Comparative negligence.

Circuit court did not err, pursuant to Miss. Code Ann. §§ 85-5-7(5) and 63-3-805, in refusing an apportionment-of-fault jury instruction because the uncontested evidence presented at trial demonstrated that it was one motorist's negligence that was the sole proximate cause of the accident at an intersection and the injuries sustained by the other motorist and the other motorist's spouse. Dunnam v. Abney, 137 So. 3d 876, 2013 Miss. App. LEXIS 770 (Miss. Ct. App. 2013), cert. denied, 139 So. 3d 74, 2014 Miss. LEXIS 242 (Miss. 2014).

Since defendant's own admission showed that he was guilty of negligence in proceeding into a through street without continuing to look for the hazard of plaintiff's approaching automobile, plaintiff was entitled to a peremptory instruction on the issue of liability, and the question of whether plaintiff was guilty of contributory negligence was for the jury, and, after finding plaintiff guilty, the jury would only diminish the amount of damages to be awarded. Wells v. Bennett, 229 Miss. 135, 90 So. 2d 199, 1956 Miss. LEXIS 594 (Miss. 1956).

In action for injuries resulting from automobile collision at intersection of cross road with through traffic lane, failure to give a comparative negligence instruction on behalf of plaintiff is not erroneous when instruction was not requested and plaintiff predicated liability on finding that defendant was negligent and defendant's negligence was the sole, proximate cause of plaintiff's injuries. Davidian v. Wendell, 37 So. 2d 570 (Miss. 1948).

8. Questions for jury.

When ultimate issue in intersection collision negligence case is relative position and speed of parties in moments prior to collision and evidence offered by witnesses is sharply conflicting, it is proper for jury to resolve conflict. Mills v. Nichols, 467 So. 2d 924, 1985 Miss. LEXIS 2017 (Miss. 1985).

In an action for personal injuries arising out of a multiple vehicle collision, the trial court erred in directing a verdict in favor of the defendant where a question of fact existed as to whether the defendant had been negligent in failing to yield the right-of-way to the plaintiff's vehicle. Marshall v. Conley, 391 So. 2d 656, 1980 Miss. LEXIS 2183 (Miss. 1980).

What is a "through highway" may be answered categorically and absolutely, but the question who has the "right of way" cannot, since the answer to that question is variable, changing as the circumstances and facts of each situation change, so that it must be for the jury to decide under the facts of a particular case. Shivel v. Ferguson, 259 So. 2d 123, 1972 Miss. LEXIS 1524 (Miss. 1972).

Although the driver of the automobile in which the infant decedent was riding was guilty of negligence in entering the intersection, the defendant was not entitled to a directed verdict in an action for the wrongful death of the child, where the evidence raised a jury question as to whether defendant's driver was guilty of negligence which proximately contributed to the collision. Bush Constr. Co. v. Walters, 250 Miss. 384, 164 So. 2d 900, 1964 Miss. LEXIS 469 (Miss. 1964).

Violation of this section [Code 1942, § 8197] may warrant a jury in finding that an automobile was being negligently operated. West v. Armstrong, 248 Miss. 617, 159 So. 2d 805, 1964 Miss. LEXIS 285 (Miss. 1964).

Evidence, although conflicting, was sufficient to present question for jury as to whether truck driven from private road onto highway in front of an approaching car at nighttime constituted an immediate hazard. Miller Petroleum Transporters, Ltd. v. Price, 237 Miss. 284, 114 So. 2d 756, 1959 Miss. LEXIS 466 (Miss. 1959).

Whether one entering a through highway intersection after stopping should have yielded a right of way to an approaching car as presenting an immediate hazard, held for the jury where there was evidence that when he started, 15 to 20 feet from the edge of the highway, the approaching car was still several hundred feet distant and that its driver did not reduce speed after he saw or should have seen the other car entering the intersection. Junakin v. Kuykendall, 237 Miss. 255, 114 So. 2d 661, 1959 Miss. LEXIS 463 (Miss. 1959).

In an action for personal injuries and property damages arising out of a collision between plaintiff's automobile and that of the defendant when defendant allegedly drove, without stopping, from a private driveway into the highway upon which plaintiff was proceeding in such manner that plaintiff could not avoid striking him, conflicting evidence raised jury questions as to defendant's negligence, and whether his negligence was the proximate cause of the accident. Stewart v. Madden, 233 Miss. 206, 101 So. 2d 353, 1958 Miss. LEXIS 372 (Miss. 1958).

Since defendant's own admission showed that he was guilty of negligence in proceeding into a through street without continuing to look for the hazard of plaintiff's approaching automobile, plaintiff was entitled to a peremptory instruction on the issue of liability, and the question of whether plaintiff was guilty of contributory negligence was for the jury, and, after finding plaintiff guilty, the jury would only diminish the amount of damages to be awarded. Wells v. Bennett, 229 Miss. 135, 90 So. 2d 199, 1956 Miss. LEXIS 594 (Miss. 1956).

It was for the jury to say whether the defendants, in an action for death of a motorist resulting from an automobile collision, were negligent in entering an intersection without looking in the direction from which another motorist was coming, after making a stop at a stop sign some distance from the intersection. Avent v. Tucker, 188 Miss. 207, 194 So. 596, 1940 Miss. LEXIS 28 (Miss. 1940).

The fact that the defendants stopped at a stop sign a short distance from the intersection before proceeding into the intersection of a through highway would not discharge them of their duty to exercise ordinary care and diligence in proceeding upon the crossing and whether their failure to look to the south in entering the intersection was negligence proximately causing or contributing to the injury or death of a motorist approaching from that direction was for the jury. Avent v. Tucker, 188 Miss. 207, 194 So. 596, 1940 Miss. LEXIS 28 (Miss. 1940).

9. Instructions.

In an action for damages arising out of a collision between plaintiff's motorcycle and defendant's automobile in an intersection with a flashing red light and stop sign facing plaintiff and a flashing yellow light and warning sign facing defendant, the trial court did not err in refusing to grant plaintiff's standard of care instruction which included the language, "the defendant had no lawful right to go forward. . . under the assumption that it would be open and clear," where a granted instruction detailed the crucial point that the yellow light facing defendant demanded caution, and that a finding of negligence would flow from her failure to yield the right-of-way to plaintiff if, as he claimed, he had lawfully entered the intersection and stalled unexpectedly. The trial court also properly refused to grant an instruction which stated in part, "the driver of a motor vehicle has a lawful duty to decrease his speed upon approaching an intersection," since § 63-3-311(2) merely states that a driver "may proceed. . . only with caution" and caution is a relative concept not necessarily entailing decrease in speed since the current speed may already be a cautious speed. Allen v. Blanks, 384 So. 2d 63, 1980 Miss. LEXIS 2000 (Miss. 1980).

An instruction to the effect that it is the duty of a motorist approaching a through highway to anticipate the presence of other persons and vehicles thereon and keep a reasonable lookout for them, and to stop for the stop sign at the intersection and yield the right of way to traffic on the through highway, and to see if she could enter the intersection with safety to herself and the traveling public, and that if she failed in any one of those particulars or respects such failure was the sole proximate cause of an intersectional accident then it was the jury's duty to find against her, is erroneous in the absence of a further statement that after complying with these stated conditions the motorist had a right to enter the intersection and that vehicles on the through highway must yield the right of way to her. Richardson v. Adams, 223 So. 2d 536, 1969 Miss. LEXIS 1275 (Miss. 1969).

An instruction was properly refused where it would have told the jury that when the operator of an automobile is confronted with a stop sign at an intersection, he, before entering the intersection, is under a duty to appraise traffic on the intersecting highway and to make certain that the way is clear for him to make a safe passage across the highway. Such an instruction would make the person entering the intersection an insurer of his own safety, regardless of the negligence of others. Bush Constr. Co. v. Walters, 250 Miss. 384, 164 So. 2d 900, 1964 Miss. LEXIS 469 (Miss. 1964).

Although the defendant was entitled to an instruction under this section [Code 1942, § 8197], the trial court properly refused to give an instruction which was calculated to confuse the jury and did not properly present the issues. Bush Constr. Co. v. Walters, 250 Miss. 384, 164 So. 2d 900, 1964 Miss. LEXIS 469 (Miss. 1964).

Trial court did not err in refusing an instruction that would have required a holding that defendant, who was traveling along a through highway, was guilty of negligence as a matter of law even though the jury could have found that, when plaintiff had entered the intersection, defendant was so close at hand that he could not possibly have stopped or averted a collision. Walton v. Owens, 244 F.2d 383, 1957 U.S. App. LEXIS 3100 (5th Cir. Miss. 1957).

In cross actions for damages and personal injuries arising out of a motor vehicle intersectional collision, the trial court erred in instructing that the defendant who had been traveling along a road upon which a stop sign was located, not only had the duty to stop his automobile at the intersection but "to wait until he could safely proceed," since that duty is not required by this section [Code 1942, § 8197]. Hill v. Columbus Ice Cream & Creamery Co., 230 Miss. 634, 93 So. 2d 634, 1957 Miss. LEXIS 404 (Miss. 1957).

Where the plaintiff and the driver of the car in which he was riding both testified that before entering the intersection of a through highway they had looked to the north and the south, the trial court committed reversible error in instructing that the driver of the car was guilty of negligence in driving his car into the intersection without looking to the north immediately before doing so. Moore v. Herman Guy Auto Parts, Inc., 230 Miss. 189, 92 So. 2d 373, 1957 Miss. LEXIS 358 (Miss. 1957).

Where defendant testified that at the time he had stopped before entering a through street he had seen plaintiff's car approaching thereon from a distance of about 100 yards and traveling at about 40 miles per hour, but that he did not look any further before driving slowly into the through street where the collision occurred, plaintiff was entitled to a peremptory instruction in his action for personal injuries sustained as the result of the collision. Wells v. Bennett, 229 Miss. 135, 90 So. 2d 199, 1956 Miss. LEXIS 594 (Miss. 1956).

In action for injuries resulting from automobile collision at intersection of cross road with through traffic lane, failure to give a comparative negligence instruction on behalf of plaintiff is not erroneous when instruction was not requested and plaintiff predicated liability on finding that defendant was negligent and defendant's negligence was the sole, proximate cause of plaintiff's injuries. Davidian v. Wendell, 37 So. 2d 570 (Miss. 1948).

10. Negligence not found.

In a widow's wrongful-death action, the trial court properly entered a directed verdict in favor of an employer and an employee because the employee had the right of way to proceed onto the highway unless the decedent's pickup truck was so close as to constitute an immediate hazard, and the employee testified that the truck was approximately three-fourths of a mile away. Moreno v. TLSL, Inc., 187 So. 3d 127, 2016 Miss. LEXIS 124 (Miss. 2016).

The trial court did not err in finding in favor of a driver in her action against a city and a police officer stemming from a vehicular accident in which the driver was struck by the officer, because he city's argument that the driver was contributorily negligent under Miss. Code Ann. §§ 63-3-805 and 63-3-505 contained no evidentiary basis. The driver's view was blocked by a truck and therefore, she was unable to see the officer approach; the driver had a green light at the intersection and she was not speeding or violating any other rule of the road. City of Jackson v. Presley, 40 So. 3d 578, 2009 Miss. App. LEXIS 793 (Miss. Ct. App. 2009), rev'd, 40 So. 3d 520, 2010 Miss. LEXIS 385 (Miss. 2010).

Trial court properly found that defendant driver breached no duty to a pedestrian he struck and killed as she was walking near an entrance ramp; he was traveling at a prudent speed, keeping a proper lookout for traffic while preparing to merge, and the pedestrian was in his lane of travel when she was hit. Partlow v. McDonald, 877 So. 2d 414, 2003 Miss. App. LEXIS 876 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 858 (Miss. 2004).

RESEARCH REFERENCES

ALR.

Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal. 74 A.L.R.2d 242.

Comment Note. – What is a street or highway intersection within traffic rules. 7 A.L.R.3d 1204.

Automobiles: accidents arising from merger of traffic on limited access highway with that from service road or ramp. 40 A.L.R.3d 1429.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 239, 240, 281 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 141-148.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 898-904, 1341-1524, 1954.

§ 63-3-807. Vehicle entering or crossing highway from private road or driveway.

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on said highway.

HISTORY: Codes, 1942, § 8198; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury questions.

1. In general.

The statute does not require the driver of a vehicle who has already entered onto an intersection with a through highway to yield the right of way to an approaching vehicle which has neither entered the intersection nor approached so closely thereto from the through highway as to constitute an immediate hazard, and this is likewise true as to a vehicle about to enter or cross a through highway from a private road or driveway. Jones v. Carter, 192 Miss. 603, 7 So. 2d 519, 1942 Miss. LEXIS 55 (Miss. 1942).

2. Jury questions.

In an action for personal injuries and property damages arising out of a collision between plaintiff's automobile and that of defendant when defendant allegedly drove, without stopping, from a private driveway into the highway upon which plaintiff was proceeding in such a manner that plaintiff could not avoid striking him, conflicting evidence raised jury questions as to defendant's negligence, and whether his negligence was the proximate cause of the accident. Stewart v. Madden, 233 Miss. 206, 101 So. 2d 353, 1958 Miss. LEXIS 372 (Miss. 1958).

RESEARCH REFERENCES

ALR.

Comment Note. – What is a street or highway intersection within traffic rules. 7 A.L.R.3d 1204.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 287.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 939.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 221-223, 570.1 (complaint in collision between bicyclists when minor bicyclist enters roadway from private driveway).

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 900, 901, 1341-1524, 1955.

CJS.

60A C.J.S., Motor Vehicles §§ 792 et seq.

§ 63-3-809. Procedure upon approach of authorized emergency vehicles; procedure upon approaching certain stationary vehicles using authorized flashing lights; duty of driver of authorized emergency, recovery or utility service vehicle.

(1) Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a law enforcement officer.

(2) Upon approaching a stationary authorized emergency vehicle, when such vehicle is giving a signal by use of flashing, blinking, oscillating or rotating lights, as authorized under Section 63-7-19, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and being prepared to stop, if changing lanes would be impossible or unsafe.

(3) Upon approaching a stationary recovery vehicle, utility service vehicle, sanitation vehicle, or highway maintenance vehicle, when the stationary vehicle is giving a signal by use of authorized flashing lights, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to the stationary vehicle, if possible, with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and being prepared to stop, if changing lanes would be impossible or unsafe.

(4) For purposes of this section, unless the context otherwise clearly requires:

(a) "Highway maintenance vehicle" means a vehicle used for the maintenance of highways and roadways in this state and is:

(i) Owned or operated by the Department of Transportation, a county, a municipality or other political subdivision of this state; or

(ii) Owned or operated by a contractor under contract with the Department of Transportation, a county, a municipality or other political subdivision of this state.

(b) "Recovery vehicle" means a truck that is specifically designed for towing a disabled vehicle or a combination of vehicles.

(c) "Utility service vehicle" means a vehicle used by any person, municipality, county, electric cooperative, corporation, board, commission, district or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, wastewater services, telecommunications services or any combination thereof, for sale to consumers in any particular service area, or by any contractor under contract with any such entity.

(d) "Sanitation vehicle" means a vehicle used to collect solid waste, refuse or recyclable material that is:

(i) Owned or operated by a county, a municipality or other political subdivision of this state; or

(ii) Owned or operated by a contractor under contract with a county, a municipality or other political subdivision of this state.

(5) Upon approaching a vehicle that is marked with some combination of white flashing strobe or amber and red lights, as provided in Section 63-7-19, that is operated by a United States rural mail carrier for the purpose of delivering United States mail, and that is stationary, including when the vehicle is signaling the intention to enter the roadway, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to the stationary vehicle, if possible, with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and being prepared to stop, if changing lanes would be impossible or unsafe.

(6) A violation of this section is a misdemeanor punishable by a fine:

(a) Of not more than Two Hundred Fifty Dollars ($250.00); or

(b) Of not more than One Thousand Dollars ($1,000.00) if violation of this section results in:

(i) Property damage to the emergency vehicle, sanitation vehicle, highway maintenance vehicle, utility service vehicle, recovery vehicle or rural mail carrier vehicle; or

(ii) Bodily injury to the driver or a passenger of any such vehicle.

(7) This section shall not operate to relieve the driver of an authorized emergency vehicle, a sanitation vehicle, a recovery vehicle, a utility service vehicle, a highway maintenance vehicle or a rural mail carrier vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

HISTORY: Codes, 1942, § 8199; Laws, 1938, ch. 200; Laws, 2007, ch. 315, § 1; Laws, 2012, ch. 412, § 1; Laws, 2014, ch. 314, § 1; Laws, 2017, ch. 355, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the subsection designations. Laws of 2007, ch. 315, § 1, inserted new subsections (2) through (5) but failed to renumber the original subsection (2) as present subsection (6). The Joint Committee ratified the correction, renumbering former (2) as present (6), at its June 26, 2007, meeting.

Cross References — Warning lights used on authorized emergency vehicles, see § 63-7-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for misdemeanors and felonies, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Illustrative Cases.

1. In general.

Evidence showed the officer was traveling approximately 37 miles per hour with lights and sirens activated, there was nothing obstructing the view of either the person later injured or the officer, and the greater weight of evidence also proved that the person's left turn signal was not activated. In addition, the officer had consciously stopped at the previous two intersections because the officer considered both of those to be blind intersections, and therefore, the officer's behavior supported the finding that the officer appreciated the risk involved in approaching the intersection and did not act with reckless disregard. Davis v. Latch, 873 So. 2d 1059, 2004 Miss. App. LEXIS 445 (Miss. Ct. App. 2004).

In a negligence action arising out of an automobile accident, a driver who had a green light was not negligent as a matter of law in failing to yield the right-of-way to an emergency police vehicle pursuant to § 63-3-809 because the driver of an emergency vehicle has a duty under § 63-3-315 to slow down as necessary for safety upon approaching a red traffic light controlling an intersection. Andrews v. Jitney Jungle Stores, Inc., 537 So. 2d 447, 1989 Miss. LEXIS 9 (Miss. 1989).

Even though engaged on an emergency call, the driver of a vehicle is subject to the doctrine of contributory negligence. Baird v. Harrington, 202 Miss. 112, 30 So. 2d 82, 1947 Miss. LEXIS 247 (Miss. 1947).

2. Illustrative Cases.

Jury was clearly instructed on Miss. Code Ann. §§ 63-3-809(1), 63-3-619(2), and as they fairly announced the applicable law in this wrongful death case, the circuit court did not abuse its discretion in denying appellant's proposed instruction. Rushing v. Mobile Forest Prods., 282 So. 3d 708, 2019 Miss. App. LEXIS 370 (Miss. Ct. App. 2019).

Deputy, who stopped at an intersection and, with his blue lights and sirens activated, slowly proceeded across in a stop-and-start fashion, exercised sufficient safety measures to prompt other drivers near the intersection to yield the right-of-way, including the driver traveling in the lane ahead of plaintiffs. Thus, viewing the evidence in the light most favorable to plaintiffs, the deputy's conduct did not demonstrate a conscious indifference to consequences, nor did it rise to the level of reckless disregard for the safety and well-being of persons not engaged in criminal activity, so as subject the county to liability under Miss. Code Ann. § 11-46-9(1)(c). Rayner v. Pennington, 25 So. 3d 305, 2010 Miss. LEXIS 12 (Miss. 2010).

RESEARCH REFERENCES

ALR.

Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

Construction and Application of Statutory Provision Requiring Motorists to Yield Right-of-Way to Emergency Vehicle. 87 A.L.R.5th 1.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 296-298.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 815.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 591-601, 1341-1524, 1941-1961.

41 Am. Jur. Proof of Facts 2d 79, Negligent Vehicular Police Chase.

10 Am. Jur. Proof of Facts 3d 203, Negligent Operation of Emergency Vehicle.

ARTICLE 19.

STOPPING, STANDING AND PARKING.

Sec.

63-3-901. Stopping, standing or parking prohibited in specified places.

63-3-903. Stopping, standing or parking upon highway outside of business or residence districts.

63-3-905. Authority of police officers to remove or provide for removal of illegally stopped vehicles.

63-3-907. Parking parallel with right-hand curb.

63-3-909. Parking of unattended motor vehicles.

63-3-911. Opening door of stopped motor vehicle.

63-3-913. Designation of areas of private property as restricted for emergency vehicle access; parking in or blocking restricted access areas.

63-3-915. Who may authorize towing of vehicle located on private property.

§ 63-3-901. Stopping, standing or parking prohibited in specified places.

(1) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in any of the following places:

a. On a sidewalk;

b. In front of a public or private driveway;

c. Within an intersection;

d. Within ten feet of a fire hydrant;

e. On a crosswalk;

f. Within twenty feet of a crosswalk at an intersection;

g. Within thirty feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

h. Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless the traffic authority indicates a different length by signs or markings;

i. Within fifteen feet of the nearest rail of a railroad crossing;

j. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance of any fire station within seventy-five feet of said entrance when properly signposted;

k. Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic;

(*l*) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

m. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

n. At any place where official signs prohibit stopping.

(2) No person shall move a vehicle not owned by such person into any such prohibited area or away from a curb such distance as is unlawful.

HISTORY: Codes, 1942, § 8217; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. Parking vehicle.
2. Slowing vehicle down.
3. Standing or stopping.

1. Parking vehicle.

In an action to recover damages for personal injuries sustained by plaintiff in an automobile intersectional collision allegedly caused by defendant's bus being parked in such a manner as to obscure a stop sign, any negligence on the part of the plaintiff and the driver of the car in which he was riding, as well as the driver of the other automobile, did not supersede defendant's negligence. Meridian Hatcheries, Inc. v. Troutman, 230 Miss. 493, 93 So. 2d 472, 1957 Miss. LEXIS 391 (Miss. 1957).

In an action to recover for the death of a child who was fatally injured when thrown from an automobile fender on which she was riding when the automobile struck an unattended parked automobile on a bridge, it was a question for the jury to determine whether the parking of the automobile upon the bridge and leaving it there unattended for a period of eleven hours was not a proximate contributing cause of the death of the child. Belk v. Rosamond, 213 Miss. 633, 57 So. 2d 461, 1952 Miss. LEXIS 405 (Miss. 1952).

When the legislature has said that there shall be a clear and unobstructed width of at least twenty feet of the main traveled portion of the highway for the free passage of vehicles, and that an automobile shall not be parked upon a bridge, it cannot be reasonably contended that the parking of an automobile upon a bridge nineteen feet three inches in width and leaving the car unattended for a period of eleven hours did not constitute an act of negligence. Belk v. Rosamond, 213 Miss. 633, 57 So. 2d 461, 1952 Miss. LEXIS 405 (Miss. 1952).

2. Slowing vehicle down.

Since this statute does not require that a motorist drive his vehicle off the pavement while slowing down but only requires him to do so before coming to a stop, it was not violated by a truck driver who, after his airbrakes failed, slowed down but was still moving toward the shoulder of the highway when the truck was struck by an automobile. Sprayberry v. Blount, 336 So. 2d 1289, 1976 Miss. LEXIS 1546 (Miss. 1976).

The general rule that the first vehicle in intersection has the right of way does not relieve a truck owner from the duty of having a flagman present to direct and stop traffic at busy intersection where the truck carried a huge cargo and was very slow in going through the intersection. Tant v. Fairchild, 228 Miss. 126, 87 So. 2d 78, 1956 Miss. LEXIS 495 (Miss. 1956).

3. Standing or stopping.

Where defendant stopped his car, to aid a pedestrian, on the traveled portion of the highway with part of his car extending on a highway bridge, so as to leave less than 20 feet clearance, although shoulders of the road were such that defendant could have parked entirely off highway, and plaintiff's truck struck the rear of defendant's car causing the damage complained of, defendant was guilty of violation of paragraph m of subsection (1) of this section [Code 1942, § 8217]. Gulf Refining Co. v. Brown, 196 Miss. 131, 16 So. 2d 765, 1944 Miss. LEXIS 173 (Miss. 1944).

Contributory negligence of driver of plaintiff's truck, in colliding with defendant's car, stopped on the traveled highway and at the entrance to a highway bridge in violation of law, was more responsible for the damages sued for than negligence of defendant and warranted reduction of recovery by 50 per cent. Gulf Refining Co. v. Brown, 196 Miss. 131, 16 So. 2d 765, 1944 Miss. LEXIS 173 (Miss. 1944).

OPINIONS OF THE ATTORNEY GENERAL

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 303 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 811 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 341-363, 431-434.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 971-980, 1341-1524, 1531-2060.

26 Am. Jur. Proof of Facts 2d 575, Feasibility of Stopping or Parking Vehicle off Roadway.

CJS.

60A C.J.S., Motor Vehicles §§ 727 et seq.

61A C.J.S., Motor Vehicles §§ 1753-1754.

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Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-903. Stopping, standing or parking upon highway outside of business or residence districts.

(1) No person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled part of any highway outside of a business or residence district when it is practical to stop, park or so leave such vehicle off such part of said highway. In every event, however, a clear and unobstructed width of at least twenty (20) feet of such part of the highway opposite such standing vehicle shall be left for the free

passage of other vehicles and a clear view of such stopped vehicle be available from a distance of two hundred (200) feet in each direction upon such highway.

(2) This section shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

(3) Any vehicle used solely for the purpose of collecting solid waste, under a contract with any county, municipality, resident or business for the collection of solid waste may stop or stand on the road, street or highway for the sole purpose of collecting solid waste. Such solid waste collection vehicle shall maintain hazard lights on the vehicle at all times that it is engaged in stopping or standing for the purpose of solid waste collection.

HISTORY: Codes, 1942, § 8215; Laws, 1938, ch. 200; Laws, 1992, ch. 583 § 16, eff from and after passage (approved May 15, 1992).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Construction in general.
4. Impossibility of leaving highway unobstructed.
5. Leaving disabled vehicle on highway.
6. Parked vehicle.
7. Slow moving vehicle.
8. Standing or stopped vehicle.
9. Turning.
10. Questions for jury.

1. In general.

Minor who enters upon an adult activity such as the operation of a motor vehicle must exercise a commensurate degree of responsibility, and will be held to adult standard in determining whether their conduct while engaging in such adult activity is negligent. Davis v. Waterman, 420 So. 2d 1063, 1982 Miss. LEXIS 2232 (Miss. 1982).

Violation of this section [Code 1942, § 8215] will not support an action for injury unless it is the proximate cause thereof. Mississippi City Lines, Inc. v. Bullock, 194 Miss. 630, 13 So. 2d 34, 1943 Miss. LEXIS 93 (Miss. 1943).

2. Applicability.

This section [Code 1942, § 8215] applies only to highways outside of a business or residence district. Filgo v. Crider, 251 Miss. 234, 168 So. 2d 805, 1964 Miss. LEXIS 343 (Miss. 1964).

3. Construction in general.

The two paragraphs of this section [Code 1942, § 8215] should be construed together so as to give effect to their true meaning. Hankins v. Harvey, 248 Miss. 639, 160 So. 2d 63, 1964 Miss. LEXIS 288 (Miss. 1964).

The constitutionality of this section [Code 1942, § 8215] can be sustained by giving the word "practical" in subsection (1) an operation throughout the entire section, and by preserving as referable to the words, "in any event," the provision that, when possible, a clear view for 200 feet shall be available. Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

Statutes regulatory of highway traffic must have a practical or workable interpretation, not an arbitrary or unreasonable construction, and never that which would require an impossibility. Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

4. Impossibility of leaving highway unobstructed.

The word "impossible" as used in subsection (2) should be construed as "not reasonably practical". Hankins v. Harvey, 248 Miss. 639, 160 So. 2d 63, 1964 Miss. LEXIS 288 (Miss. 1964).

Where the driver of a motor vehicle was actually negligent in bringing his motor vehicle to a stop partially on the paved and main traveled portion of the highway, the fact that he may have pulled his motor vehicle as far to the right as practicable, including sound and safe shoulders, and that there may have been a clear view of this stopped vehicle for a distance of 200 feet in each direction, does not relieve him from the liability for injuries proximately caused by his negligence. Continental Southern Lines, Inc. v. Klaas, 217 Miss. 795, 63 So. 2d 211, 65 So. 2d 575, 1953 Miss. LEXIS 496 (Miss. 1953).

This section [Code 1942, § 8215] is to be construed to the effect that when 20 feet of clearance is impossible, the vehicle shall turn as far to the right as practical including sound and safe shoulders, but must not stop upon any part of the traveled highway unless and until at least 200 feet clear view is available in each direction from the point where the stop is made, save when the vehicle is disabled, as provided for under subsection (2); and save further, when on account of obstructions or equivalent conditions ahead, it is impossible to proceed so as to leave the 200 feet of clear view; and that all this is for the determination of the jury. Gulf Refining Co. v. Brown, 196 Miss. 131, 16 So. 2d 765, 1944 Miss. LEXIS 173 (Miss. 1944); Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

In construing this section [Code 1942, § 8215] the court will take judicial notice that at least 85 per cent of the public highways in the state are of such width that it is only occasionally possible, and that at distant intervals, to stop a vehicle so as to leave as much as 20 feet of unobstructed highway. Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

In an action to recover for the death of a motorist who had run into the rear of a bus which had stopped on the traveled highway to discharge a passenger at a point where it was impossible to leave 20 feet clearance opposite the bus, an instruction that if the bus was stopped upon the paved or improved or main traveled part of the highway, not in an emergency, at a place and time and in such a way as not to leave a clear and unobstructed width of at least 20 feet opposite such bus, was a violation of the law and negligence, was erroneous, since the question whether there had been a compliance with this section [Code 1942, § 8215], under the circumstances existing, was for the jury. Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

Statutes regulatory of highway traffic must have a practical or workable interpretation, not an arbitrary or unreasonable construction, and never that which would require an impossibility. Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

5. Leaving disabled vehicle on highway.

Truck driver negligently violated this section where, though he made several attempts to start his truck after it became disabled and stopped on the highway, he did not look under the hood and thus did not discover that a recently installed battery cable had become unfastened and was the cause of the problem. Aetna Casualty & Surety Co. v. Condict, 417 F. Supp. 63, 1976 U.S. Dist. LEXIS 15305 (S.D. Miss. 1976).

This section [Code 1942, § 8215] does not relieve the driver of negligence in leaving his disabled vehicle on the highway where it was disabled as a result of an earlier accident caused by his negligence. Huff v. Boyd, 242 So. 2d 698, 1971 Miss. LEXIS 1496 (Miss. 1971).

Motorist who, without negligence on his part, struck a car making a left turn ahead of him, disabling it, is under no duty to other motorists to remove it from traveled portion of highway. Brent v. Heath, 235 Miss. 324, 109 So. 2d 314, 1959 Miss. LEXIS 432 (Miss. 1959).

6. Parked vehicle.

Parking of a tractor and trailers at least two feet on the paved portion of the road, although there was room to park them entirely off, on a dark, foggy night, without rear lights, reflectors, or flares, is a violation of this section [Code 1942,

§ 8215]. Jester v. Bailey, 239 Miss. 384, 123 So. 2d 442, 1960 Miss. LEXIS 296 (Miss. 1960).

When the legislature has said that there shall be a clear and unobstructed width of at least twenty feet of the main traveled portion of the highway for the free passage of vehicles, and that an automobile shall not be parked upon a bridge, it cannot be reasonably contended that the parking of an automobile upon a bridge nineteen feet three inches in width and leaving the car unattended for a period of eleven hours did not constitute an act of negligence. Belk v. Rosamond, 213 Miss. 633, 57 So. 2d 461, 1952 Miss. LEXIS 405 (Miss. 1952).

In an action for personal injuries where the plaintiff's car ran into defendant's truck parked on a highway the court did not err in giving an instruction based on this section [Code 1942, § 8215] which requires any vehicle parking upon a highway to leave a width of at least twenty feet of the highway opposite such standing vehicle for the passage of other cars, where the parked truck could have been moved back from seven to ten feet. Planters Wholesale Grocery v. Kincade, 210 Miss. 712, 50 So. 2d 578, 1951 Miss. LEXIS 309 (Miss. 1951).

7. Slow moving vehicle.

The operator of an automobile has the right to slow down and come to a stop, to back, or to turn his car, in the street or highway, but in so doing must exercise reasonable care with respect to other vehicles and pedestrians and this duty exists independently of any regulations on the subject, and where the driver of an automobile is actually not negligent, the fact that he is violating no statute or ordinance does not relieve him of that liability. Continental Southern Lines, Inc. v. Klaas, 217 Miss. 795, 63 So. 2d 211, 65 So. 2d 575, 1953 Miss. LEXIS 496 (Miss. 1953).

Where defendant's truck became partially disabled because of water damage to engine and was proceeding slowly ahead of plaintiff's automobile, which was struck in the rear by an overtaking truck, and at the time of the collision the driver of defendant's truck was attempting to move it to place where he could get off the highway and the forward movement of defendant's truck was halted for very brief intervals, the driver of the defendant's truck did not violate the parking statute. Fant v. Commercial Carriers, Inc., 210 Miss. 474, 49 So. 2d 887, 1951 Miss. LEXIS 284 (Miss. 1951).

8. Standing or stopped vehicle.

Where an injured motorist, who was experiencing chest discomfort, pulled his vehicle partly off the highway, but partly obstructed the right-hand lane of travel in violation of Miss. Code Ann. § 63-3-903, the motorist's act was a proximate and contributing cause an accident, and the trial court did not err by allowing the jury to apportion fault. Meka v. Grant Plumbing & Air Conditioning Co., 67 So. 3d 18, 2011 Miss. App. LEXIS 402 (Miss. Ct. App. 2011).

Although a county was not liable for an individual's injuries after a third party hit the individual and forced her into a county garbage truck because weather conditions were determined to be the sole cause of the accident, the county also would have been immune under Miss. Code Ann. § 63-3-903, as there was no evidence that any negligence was attributed to the driver of the garbage truck. Hayes v. Greene County, 932 So. 2d 831, 2005 Miss. App. LEXIS 774 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 521 (Miss. 2006).

Where a truck driver stopped his rig on an interstate highway to aid a disabled motorist, § 63-3-903 required him to pull off the road to the extent practicable. Stong v. Freeman Truck Line, Inc., 456 So. 2d 698, 1984 Miss. LEXIS 1812 (Miss. 1984).

Where the driver of a tractor-trailer, while attempting to turn the rig around, had stopped the vehicle in violation of this section [Code 1942, § 8215] in such a fashion that it was blocking both lanes of a two way highway, the fact that there was no time later in which he could extricate himself from the dangerous position in which he had deliberately placed himself cannot excuse his original act of negligence. Anderson v. Eagle Motor Lines, Inc., 423 F.2d 81, 1970 U.S. App. LEXIS 10685 (5th Cir. Miss. 1970).

Where the exigencies of the traffic situation require, a motorist can stop momentarily in the highway without being guilty of negligence and is not required to drive the vehicle off the main portion of the highway prior to stopping. Burt v. Duckworth, 206 So. 2d 850, 1968 Miss. LEXIS 1592 (Miss. 1968).

This section [Code 1942, § 8215] should be construed in a practical manner, and it does not mean that a motorist forced to stop momentarily upon the paved portion of a highway because the vehicle in front of him stopped and oncoming traffic prevented him from passing is guilty of negligence in not immediately driving from the highway onto the shoulder. Whitten v. Land, 188 So. 2d 246, 1966 Miss. LEXIS 1375 (Miss. 1966).

The operator of an automobile has the right to slow down and come to a stop, to back, or to turn his car, in the street or highway, but in so doing must exercise reasonable care with respect to other vehicles and pedestrians and this duty exists independently of any regulations on the subject, and where the driver of an automobile is actually not negligent, the fact that he is violating no statute or ordinance does not relieve him of that liability. Continental Southern Lines, Inc. v. Klaas, 217 Miss. 795, 63 So. 2d 211, 65 So. 2d 575, 1953 Miss. LEXIS 496 (Miss. 1953).

The driver of a passenger bus, like the operator of any other motor vehicle on the public highway, must not only observe the statutory requirements of bringing his vehicle to a stop, but he must also exercise due care not to endanger the safety of other persons using the highway and this duty to exercise due care exists independently of any statutory regulation. Continental Southern Lines, Inc. v. Klaas, 217 Miss. 795, 63 So. 2d 211, 65 So. 2d 575, 1953 Miss. LEXIS 496 (Miss. 1953).

Contributory negligence of driver of plaintiff's truck, in colliding with defendant's car, stopped on the traveled highway and at the entrance to a highway bridge in violation of law, was more responsible for the damages sued for than negligence of defendant and warranted reduction of recovery by 50 per cent. Gulf Refining Co. v. Brown, 196 Miss. 131, 16 So. 2d 765, 1944 Miss. LEXIS 173 (Miss. 1944).

Where defendant stopped his car, to aid pedestrian, on traveled portion of highway at entrance to bridge so as to leave less than 20 feet clearance, although the shoulders of the road were in such condition that defendant could have parked entirely off the highway, and plaintiff's truck struck the rear of defendant's car causing the damage complained of, trial judge was warranted in finding that the stopping of defendant's car at the particular place shown by the evidence was in violation of this section [Code 1942, § 8215], and constituted actionable negligence. Gulf Refining Co. v. Brown, 196 Miss. 131, 16 So. 2d 765, 1944 Miss. LEXIS 173 (Miss. 1944).

Violation of this section [Code 1942, § 8215] by stopping a bus with the rear end thereof out into the highway was not the proximate cause of injury to a passenger, who after alighting from the bus passed around the rear end of the bus into traffic and was struck by an automobile. Mississippi City Lines, Inc. v. Bullock, 194 Miss. 630, 13 So. 2d 34, 1943 Miss. LEXIS 93 (Miss. 1943).

In an action to recover for the death of a motorist who had run into the rear of a bus which had stopped on the traveled highway to discharge a passenger at a point where it was impossible to leave 20 feet clearance opposite the bus, an instruction that if the bus was stopped upon the paved or improved or main traveled part of the highway, not in an emergency, at a place and time and in such a way as not to leave a clear and unobstructed width of at least 20 feet opposite such bus, was a violation of the law and negligence, was erroneous, since the question whether there had been a compliance with this section [Code 1942, § 8215], under the circumstances existing, was for the jury. Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

The right to travel being the right to go from one place to another includes the right to stop on the way, temporarily, for a legitimate or necessary purpose when that purpose is an immediate incident to travel; and such rights, being fundamental, are constitutional rights which the legislature may regulate in pursuance of the police power but may not arbitrarily or unreasonably restrict. Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

9. Turning.

Where the driver of a tractor-trailer, while attempting to turn the rig around, had stopped the vehicle in violation of this section [Code 1942, § 8215] in such a fashion that it was blocking both lanes of a two way highway, the fact that there was no time later in which he could extricate himself from the dangerous position in which he had deliberately placed himself cannot excuse his original act of negligence. Anderson v. Eagle Motor Lines, Inc., 423 F.2d 81, 1970 U.S. App. LEXIS 10685 (5th Cir. Miss. 1970).

The operator of an automobile has the right to slow down and come to a stop, to back, or to turn his car, in the street or highway, but in so doing must exercise reasonable care with respect to other vehicles and pedestrians and this duty exists independently of any regulations on the subject, and where the driver of an automobile is actually not negligent, the fact that he is violating no statute or ordinance does not relieve him of that liability. Continental Southern Lines, Inc. v. Klaas, 217 Miss. 795, 63 So. 2d 211, 65 So. 2d 575, 1953 Miss. LEXIS 496 (Miss. 1953).

10. Questions for jury.

In an action for personal injuries sustained by the plaintiff when pickup truck in which he was riding collided with a passenger bus where the bus driver stopped his bus to discharge passengers at nighttime in the rain with approximately one-half of the bus on paved portion of the highway whether the bus driver was negligent in not parking entirely off the paved portion of the highway was a question for the jury. Continental Southern Lines, Inc. v. Williams, 226 Miss. 624, 85 So. 2d 179, 1956 Miss. LEXIS 440 (Miss. 1956).

In an action to recover for the death of a child who was fatally injured when thrown from an automobile fender on which she was riding when the automobile struck an unattended parked automobile on a bridge, it was a question for the jury to determine whether the parking of the automobile upon the bridge and leaving it there unattended for a period of eleven hours was not a proximate contributing cause of the death of the child. Belk v. Rosamond, 213 Miss. 633, 57 So. 2d 461, 1952 Miss. LEXIS 405 (Miss. 1952).

In an action to recover for the death of a motorist who had run into the rear of a bus which had stopped on the traveled highway to discharge a passenger at a point where it was impossible to leave 20 feet clearance opposite the bus, an instruction that if the bus was stopped upon the paved or improved or main traveled part of the highway, not in an emergency, at a place and time and in such a way as not to leave a clear and unobstructed width of at least 20 feet opposite such bus, was a violation of the law and negligence, was erroneous, since the question whether there had been a compliance with this section [Code 1942, § 8215], under the circumstances existing, was for the jury. Teche Lines, Inc. v. Danforth, 195 Miss. 226, 12 So. 2d 784, 1943 Miss. LEXIS 116 (Miss. 1943).

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Sudden or unsignalled stop or slowing of motor vehicle as negligence. 29 A.L.R.2d 5.

Liability for injury or damage growing out of pulling out of parked motor vehicle. 29 A.L.R.2d 107.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes. 72 A.L.R.2d 6.

Applicability of res ipsa loquitur where motor vehicle stops on highway. 79 A.L.R.2d 153.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 303 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 884 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Accidents, Forms 341-363, 431-434.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 971-979, 1341-1524, 2002.

26 Am. Jur. Proof of Facts 2d 575, Feasibility of Stopping or Parking Vehicle off Roadway.

CJS.

60A C.J.S., Motor Vehicles §§ 727 et seq.

61A C.J.S., Motor Vehicles §§ 1753, 1754.

§ 63-3-905. Authority of police officers to remove or provide for removal of illegally stopped vehicles.

(1) Whenever any police officer finds a vehicle standing upon a highway in violation of Section 63-3-903, such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or improved or main traveled part of such highway.

(2) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

HISTORY: Codes, 1942, § 8216; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

In view of the statute requiring police officers to remove a vehicle from the highway when it is a danger to the traveling public, the partial unloading of a rental truck, which was so heavily loaded that it could not be moved without being partially unloaded, and the removal of the truck to the courthouse, was not an illegal search, where at the time the officers moved the truck, they did not search it or seize any of its contents, and did not know that a crime had been committed. Williamson v. State, 248 So. 2d 634, 1971 Miss. LEXIS 1476 (Miss. 1971).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 311.

CJS.

61A C.J.S., Motor Vehicles §§ 1753, 1754.

§ 63-3-907. Parking parallel with right-hand curb.

Except where angle parking is permitted by local ordinance or usage, every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the right-hand wheels of such vehicle parallel with and within twelve inches of the right-hand curb.

HISTORY: Codes, 1942, § 8218; Laws, 1938, ch. 200.

OPINIONS OF THE ATTORNEY GENERAL

Regulating the standing or parking of vehicles Municipal police officers may issue citations for violations of this section within the corporate limits. In addition, municipal governing authorities may adopt ordinances regulating parking of vehicles and setting forth penalties for parking violations. Hamilton, April 12, 1996, A.G. Op. #96-0210.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 312.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 887.

CJS.

60A C.J.S., Motor Vehicles §§ 761, 762-766.

61A C.J.S., Motor Vehicles §§ 1753, 1754.

§ 63-3-909. Parking of unattended motor vehicles.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, and, when standing upon any perceptible grade, without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway.

HISTORY: Codes, 1942, § 8219; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Estoppel by acquiescence.

1. In general.

Owner, who parked his automobile and left it unattended, without removing the ignition key, was not liable for injuries caused when his automobile, driven by a thief, ran through a red traffic light at a reckless rate of speed and crashed into the car in which the plaintiff was riding. Permenter v. Milner Chevrolet Co., 229 Miss. 385, 91 So. 2d 243, 1956 Miss. LEXIS 618 (Miss. 1956).

2. Estoppel by acquiescence.

In an action based on the negligence of defendant car dealer in placing plaintiff's car on its parking lot with the key in the ignition, which resulted in its theft, the county judge was in error in sustaining the affirmative defense of estoppel by acquiescence, because the custom and usage of the defendant in parking the cars of its customers on its parking lot with the keys in the ignition was against public policy. Gates v. Owen Chevrolet Co., 294 So. 2d 179, 1974 Miss. LEXIS 1818 (Miss. 1974).

RESEARCH REFERENCES

ALR.

Liability for injury or damage caused by accidental starting up of parked motor vehicle. 16 A.L.R.2d 979.

Liability for damage or injury by stranger starting motor vehicle left parked on street. 51 A.L.R.2d 633.

Failure of motorist to cramp wheels against curb or turn them away from traffic, or to shut off engine, as causing accidental starting up of parked motor vehicle. 42 A.L.R.3d 1283.

Liability of business establishments, places of accommodation or recreation, and the like, for injury or damage occurring on the premises caused by the accidental starting up of parked motor vehicle. 43 A.L.R.3d 952.

Liability of motorist who left key in ignition for damage or injury caused by stranger operating the vehicle. 45 A.L.R.3d 787.

Presumption of negligence and application of Res ipsa loquitur Doctrine in action for injury or damage caused by accidental starting up of a parked motor vehicle. 55 A.L.R.3d 1260.

Liability for personal injury or property damage caused by unauthorized use of automobile which has been parked with keys removed from ignition. 70 A.L.R.4th 276.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 303 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 922-925.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 363.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 1341-1524, 2001.

CJS.

60A C.J.S., Motor Vehicles §§ 767-771.

61A C.J.S., Motor Vehicles §§ 1753, 1754.

§ 63-3-911. Opening door of stopped motor vehicle.

No person shall open any door on a motor vehicle unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on a side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

HISTORY: Laws, 1983, ch. 350, § 4, eff from and after July 1, 1983.

§ 63-3-913. Designation of areas of private property as restricted for emergency vehicle access; parking in or blocking restricted access areas.

(1) The designation of areas on private property which are clearly marked to restrict access thereto to emergency vehicles shall be considered permission by the owner of such property that law enforcement officers may enter such private property to enforce such restricted access; and all municipal, county and state law enforcement officers are authorized to enforce such restriction.

(2) It is unlawful to park a motor vehicle, other than an emergency vehicle responding to an emergency, in an area which has been marked as provided in subsection (1) of this section; and any person who unlawfully parks a motor vehicle in such an area or who blocks access thereto is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Hundred Dollars ($100.00) for each violation. For the third and any subsequent offense under this section, the offender's driver's license shall be suspended for ninety (90) days in accordance with Section 63-1-53, Mississippi Code of 1972, in addition to any fine imposed.

(3) For the purpose of this section "emergency vehicle" means fire department vehicles, law enforcement vehicles, ambulances and any other vehicle designated as an emergency vehicle by the governing authority of the county or municipality within which the private property is located.

HISTORY: Laws, 1995, ch. 461, § 1, eff from and after July 1, 1995.

JUDICIAL DECISIONS

1. "Clearly marked."

The area in which the defendant parked was clearly marked to restrict access to emergency vehicles, notwithstanding that there were no signs posted to indicate that the area was restricted, where there was evidence presented that the area was marked with yellow and black stripes. Langston v. City of Iuka, 792 So. 2d 1013, 2001 Miss. App. LEXIS 171 (Miss. Ct. App. 2001).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 303.

CJS.

60A C.J.S., Motor Vehicles §§ 762, 763, 765 et seq.

§ 63-3-915. Who may authorize towing of vehicle located on private property.

A motor vehicle that is located upon private property may not be towed except when authorized by the owner of the motor vehicle, the lienholder of the motor vehicle, the owner of the property upon which the motor vehicle is located or the towing is authorized by other local, state or federal law.

HISTORY: Laws, 2011, ch. 451, § 1, eff from and after July 1, 2011.

ARTICLE 21.

REQUIRED STOPS.

Sec.
63-3-1001. Designation of stop intersections; design and placement of stop signs.
63-3-1003. Designation of yield-right-of-way entrances; conduct of driver at yield-right-of-way intersection; proof of failure to yield-right-of-way.
63-3-1005. Stops before emerging from alley, driveway or building.
63-3-1007. Stops at railroad grade crossings in obedience to signal indicating approach of train or other on-track equipment; effect of noncompliance upon right of recovery in civil action.
63-3-1009. Stops at designated particularly dangerous railroad grade crossings.
63-3-1011. Stops at railroad grade crossings by vehicles carrying passengers for hire or explosive substances and school buses.
63-3-1013. Moving heavy equipment at railroad grade crossing.

§ 63-3-1001. Designation of stop intersections; design and placement of stop signs.

(1) The state highway commission with reference to state highways, and local authorities with reference to other highways under their jurisdiction, may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection signs at specified entrances thereto

or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

(2) Every said sign shall bear the word "Stop" in letters not less than 8" in height which sign shall be self-illuminated at night or if not shall be reflectorized. Every stop sign shall be located as near as practical at the property line of the highway at the entrance to which the stop must be made, or at the nearest line of the crosswalk thereat, or, if none, at the nearest line of the roadway.

HISTORY: Codes, 1942, § 8213; Laws, 1938, ch. 200; Laws, 1956, ch. 325.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Directed verdict.

1. In general.

Where defendant's driver was grossly negligent in entering intersection at 50 miles per hour without stopping as required by this section [Code 1942, § 8213], and collided with plaintiff's driver who, in entering the intersection on a through street at unabated speed of 30 miles per hour, was prima facie negligent under Code 1942, § 8176, the negligence of plaintiff's driver was a contributing factor to the accident and warranted application of the comparative negligence statute (Code 1942, § 1454). Moore v. Abdalla, 197 Miss. 125, 19 So. 2d 502, 1944 Miss. LEXIS 281 (Miss. 1944).

2. Directed verdict.

In an action for personal injuries sustained by a plaintiff when his automobile was struck from the rear by the defendant's automobile, where the evidence presented jury questions as to whether the defendant was negligent in driving at an excessive speed, or following another vehicle too closely, or in failing to have his vehicle under proper control, or whether the sole proximate cause of the collision was the manner in which the plaintiff's vehicle was driven into the intersection, the trial court erred in directing a verdict for plaintiff on the issue of liability. Buntyn v. Robinson, 233 Miss. 360, 102 So. 2d 126, 1958 Miss. LEXIS 391 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 239, 240.

8 Am. Jur. 2d, Automobile and Highway Traffic §§ 804-810.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 166-170.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 895, 896, 1341-1524, 1876.

CJS.

60A C.J.S., Motor Vehicles § 837.

61A C.J.S., Motor Vehicles § 1756.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-1003. Designation of yield-right-of-way entrances; conduct of driver at yield-right-of-way intersection; proof of failure to yield-right-of-way.

(1) The state highway commission with reference to state highways under its jurisdiction and local authorities with reference to other highways under their jurisdiction may, when traffic conditions warrant such action, give preference to traffic through any intersection on any highway and designate specified entrances to said intersections as yield-right-of-way entrance by erecting yield-right-of-way signs in lieu of stop signs as required or permitted in Section 63-3-1001.

(2) The driver of a vehicle in obedience to a yield-right-of-way sign shall reduce the speed of his vehicle to not more than twenty miles per hour and shall yield the right-of-way to other vehicles which have entered the intersecting highway either from the right or left or which are approaching so closely on said intersecting highway as to constitute an immediate hazard. However, said driver having so yielded may proceed at such time as a safe interval occurs.

(3) If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a yield-right-of-way sign, such collision or interference shall be deemed prima facie evidence of the driver's failure to yield the right-of-way.

HISTORY: Codes, 1942, § 8213; Laws, 1938, ch. 200; Laws, 1956, ch. 325.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (3) by inserting the word "the" preceding "right-of-way." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

JUDICIAL DECISIONS

1. Negligence per se.

Just as one seeking relief for any other cause of action needs not refer to the case establishing the particular tort at the center of his case, Fed. R. Civ. P. 8 does not demand that a plaintiff claiming negligence per se include within his complaint an explicit citation to authority simply for the sake of doing so; so long as the complaint alleges particular conduct that clearly violates a statute or regulation, it pleads negligence per se with sufficient particularity. Therefore, summary judgment was denied in a negligence per se case where there was no citation to Miss. Code Ann. § 63-3-1003 since a complaint was sufficient where it alleged that a truck driver failed to adhere to the proper standard of care when he did not yield the right of way. Welch v. Loftus, 776 F. Supp. 2d 222, 2011 U.S. Dist. LEXIS 17963 (S.D. Miss. 2011).

RESEARCH REFERENCES

Am. Jur.
8 Am. Jur. 2d, Automobiles and Highway Traffic § 810.

CJS.
60A C.J.S., Motor Vehicles § 842.

§ 63-3-1005. Stops before emerging from alley, driveway or building.

The driver of a vehicle within a business or residence district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across any alley way or private driveway.

HISTORY: Codes, 1942, § 8214; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instructions.

1. In general.
The failure of a motorist, who was backing his automobile out of his driveway onto the street in a thickly populated neighborhood, to stop his automobile upon the rear of the driveway before reaching the sidewalk was prima facie negligence. Hatten v. Brame, 233 Miss. 509, 103 So. 2d 4, 1958 Miss. LEXIS 410 (Miss. 1958).

2. Instructions.
In an action for personal injuries sustained when a blind pedestrian was struck when defendant backed his automobile from his driveway to a public street in a thickly populated neighborhood, where the evidence established that the defendant failed to stop his automobile upon the rear of the driveway before entering the sidewalk area, the trial court properly granted the pedestrian a peremptory instruction on liability. Hatten v. Brame, 233 Miss. 509, 103 So. 2d 4, 1958 Miss. LEXIS 410 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 287.
8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 939 et seq.
3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 221-223.
3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 941-949, 1341-1524, 1991, 1992.

CJS.
60A C.J.S., Motor Vehicles §§ 792-803.

§ 63-3-1007. Stops at railroad grade crossings in obedience to signal indicating approach of train or other on-track equipment; effect of noncompliance upon right of recovery in civil action.

(1) Whenever any person driving a vehicle approaches a railroad grade crossing and a clearly visible electric or mechanical signal device gives warning of the immediate approach of a train or other on-track equipment, including, but not limited to, hi-rail vehicles and on-track maintenance equipment, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest track of such railroad and shall not proceed until he can do so safely.

(2) The driver of a vehicle shall stop and remain standing and not traverse such a grade crossing when a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a train or other on-track equipment, including, but not limited to, hi-rail vehicles and on-track maintenance equipment. The violation of this section shall not of itself defeat recovery and the question of negligence or the violation aforesaid, shall be left to the jury and the comparative negligence statute and prima facie statute of this state shall apply in these cases as in other cases of negligence.

HISTORY: Codes, 1942, § 8209; Laws, 1938, ch. 200; Laws, 2004, ch. 448, § 3, eff from and after July 1, 2004; Laws, 2018, ch. 303, § 1, eff from and after July 1, 2018.

JUDICIAL DECISIONS

1. In general.

Proof of violation of statute is not necessary in order to prove negligence, and injured party established prima facie case of negligence by proving that driver violated statute by not stopping at crossing even though approaching train was plainly visible and in dangerous proximity to crossing, and by proving that driver was negligent in that he failed to keep proper lookout by looking back as he approached railroad crossing, rejecting contention of driver that because there was no evidence crossing was marked by signal or stop sign injured party had failed to prove driver had violated statute and therefore had failed to prove negligence. Dale v. Bridges, 507 So. 2d 375, 1987 Miss. LEXIS 2525 (Miss. 1987).

RESEARCH REFERENCES

Am. Jur.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 1885-1887.

23 Am. Jur. Trials 1, Railroad Crossing Accident Litigation.

10 Am. Jur. Proof of Facts 1, Railroads.

37 Am. Jur. Proof of Facts 2d 439, Inadequacy of Warning Device at Railroad Crossing.

§ 63-3-1009. Stops at designated particularly dangerous railroad grade crossings.

The Mississippi Transportation Commission is hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest track of such grade crossing and shall proceed only upon exercise of due care.

HISTORY: Codes, 1942, § 8210; Laws, 1938, ch. 200; Laws, 2004, ch. 448, § 4, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. Negligence.

Federal district court did not err in rejecting an injured contract worker's contention that a railroad was negligent per se for failing to install a flagman near a crossing 20-30 feet from where the worker was removing obstructions from the right-of-way; although the worker's truck was hit by a train while crossing the tracks, the evidence showed that the location of the work zone did not force the worker to "foul the tracks" while maneuvering his truck and that he had violated three separate laws when he crossed the tracks: not stopping after hearing the locomotive's whistle in violation of Miss. Code Ann. § 77-9-249(1), failing to stop at a crossbuck in violation of Miss. Code Ann. § 77-9-249(4), and failing to stop at a stop sign in violation of Miss. Code Ann. § 63-3-1009, any of which could have been the proximate cause of the accident. Baker v. Canadian National/Illinois Cent. R.R., 536 F.3d 357, 2008 U.S. App. LEXIS 15178 (5th Cir. Miss. 2008), cert. denied, 555 U.S. 1171, 129 S. Ct. 1317, 173 L. Ed. 2d 585, 2009 U.S. LEXIS 1320 (U.S. 2009).

RESEARCH REFERENCES

Am. Jur.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 1885-1887.

23 Am. Jur. Trials 1, Railroad Crossing Accident Litigation.

10 Am. Jur. Proof of Facts 1, Railroads.

§ 63-3-1011. Stops at railroad grade crossings by vehicles carrying passengers for hire or explosive substances and school buses.

(1) The driver of any motor vehicle carrying passengers for hire or of any vehicle carrying explosive substances of flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for:

(a) Any approaching train or any other vehicle operated upon the rails for the purpose of maintenance of railroads, including, but not limited to, all hi-rail vehicles and on-track maintenance machines; and

(b) Signals indicating the approach of a train or any other vehicle or machine operated upon the rails. The driver shall not proceed until he can do so safely.

(2) No stop need be made at any crossing where a police officer or a traffic control signal directs traffic to proceed.

(3) The driver of every school transportation vehicle used to transport pupils, upon approaching any railroad crossing, shall comply with the provisions of Section 37-41-55.

HISTORY: Codes, 1942, § 8211; Laws, 1938, ch. 200; Laws, 2004, ch. 448, § 5; Laws, 2011, ch. 327, § 1, eff from and after July 1, 2011.

JUDICIAL DECISIONS

1. In general.

Violation of this requirement held to establish negligence of driver of truck struck by train at crossing. Illinois C. R. Co. v. Nelson, 245 Miss. 395, 146 So. 2d 69, 1962 Miss. LEXIS 560, 1963 Miss. LEXIS 527, 1963 Miss. LEXIS 547 (Miss. 1962).

RESEARCH REFERENCES

ALR.

Failure of occupants of motor vehicle stalled on railroad crossing to get out and move to place of safety as contributory negligence. 21 A.L.R.2d 742.

Am. Jur.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 1885-1887.

23 Am. Jur. Trials 1, Railroad Crossing Accident Litigation.

10 Am. Jur. Proof of Facts 1, Railroads.

§ 63-3-1013. Moving heavy equipment at railroad grade crossing.

No person shall operate or move any caterpillar tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of six (6) or less miles per hour or a vertical body or load clearance of less than nine (9) inches above the level surface of a roadway upon or across any tracks at a railroad grade crossing without notice of any such intended crossing first being given to a superintendent of such railroad and a reasonable time being given to such railroad to provide proper protection at such crossing.

Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen (15) feet nor more than fifty (50) feet from the nearest rail of such railway and while so stopped shall listen and look in both directions along such track for any approaching train or other on-track equipment, including, but not limited to, hi-rail vehicles and on-track maintenance equipment and for signals indicating the approach of a train or other on-track equipment, including, but not limited to, hi-rail vehicles and on-track maintenance equipment, and shall not proceed until the crossing can be made safely.

No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car or other on-track equipment, including, but not limited to, hi-rail vehicles and on-track maintenance equipment

HISTORY: Codes, 1942, § 8212; Laws, 1938, ch. 200; Laws, 2004, ch. 448, § 6, eff from and after July 1, 2004; Laws, 2018, ch. 303, § 2, eff from and after July 1, 2018.

RESEARCH REFERENCES

Am. Jur.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 1885-1887.

23 Am. Jur. Trials 1, Railroad Crossing Accident Litigation.

10 Am. Jur. Proof of Facts 1, Railroads.

ARTICLE 23.

PEDESTRIANS' RIGHTS AND DUTIES.

Sec.
63-3-1101. Pedestrians subject to traffic-control signals at intersections; privileges and restrictions at other locations.
63-3-1103. Pedestrians' right-of-way at crosswalks lacking traffic control signals; duty of vehicle approaching vehicle stopped for pedestrian.
63-3-1105. Pedestrians crossing roadways at locations other than crosswalks.
63-3-1107. Pedestrians to use right half of crosswalks.
63-3-1109. Solicitation of rides by pedestrians.
63-3-1111. Rights of blind and otherwise incapacitated pedestrians crossing at or near intersections or crosswalks; effect of failure to employ cane or guide dog; regulation of use of canes.
63-3-1112. Duty of driver to avoid collision with pedestrian or person propelling human-powered vehicle; warning signal.
63-3-1113. Driving through safety zone.

§ 63-3-1101. Pedestrians subject to traffic-control signals at intersections; privileges and restrictions at other locations.

Pedestrians shall be subject to traffic control signals at intersections as heretofore declared in this chapter. At all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.

HISTORY: Codes, 1942, § 8200; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1.-10. [Reserved for future use.]
11. Under former law.

1.-10. [Reserved for future use.]

11. Under former law.

Ordinance regulating pedestrian's use

of streets held reasonable because of automobile traffic. Snyder v. Campbell, 145 Miss. 287, 110 So. 678, 1926 Miss. LEXIS 33 (Miss. 1926).

RESEARCH REFERENCES

ALR.

Application of "assured clear distance ahead" or "radius of lights" doctrine to accident involving pedestrian crossing street or highway. 31 A.L.R.2d 1424.

Contributory negligence of one standing in highway to attempt to warn approaching motorists of dangerous situation. 53 A.L.R.2d 1002.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated. 35 A.L.R.4th 1117.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 320.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 464, 465, 468 et seq.

9 Am. Jur. Trials 427, Child-Pedestrian Accident Cases.

42 Am. Jur. Proof of Facts 2d 1, Negligence of Pedestrian Struck by Motor Vehicle.

CJS.

60A C.J.S., Motor Vehicles §§ 895, 896.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-1103. Pedestrians' right-of-way at crosswalks lacking traffic control signals; duty of vehicle approaching vehicle stopped for pedestrian.

Where traffic control signals are not in place or in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this article.

Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

HISTORY: Codes, 1942, § 8201; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instructions.

1. In general.

Motorist's duty is to drive upon a highway at no greater speed than is reasonable, having regard to traffic, and to keep his car under control and to be on the alert for other persons and vehicles, and to anticipate their presence. Williams v. Moses, 234 Miss. 453, 106 So. 2d 45, 1958 Miss. LEXIS 517 (Miss. 1958).

2. Instructions.

An instruction as to the liability of a motorist to a pedestrian who unexpectedly walks in front of his car is not proper in a case in which the pedestrian had almost completed the crossing of a three-lane highway and was within 3 feet of the curb. Williams v. Moses, 234 Miss. 453, 106 So. 2d 45, 1958 Miss. LEXIS 517 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 299, 302, 320 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 453, 467.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 481-505, 903, 904, 1341-1524, 1784-1789, 1985.

9 Am. Jur. Trials 427, Child-Pedestrian Accident Cases.

42 Am. Jur. Proof of Facts 2d 1, Negligence of Pedestrian Struck by Motor Vehicle.

CJS.

60A C.J.S., Motor Vehicles §§ 895, 896.

§ 63-3-1105. Pedestrians crossing roadways at locations other than crosswalks.

(1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

HISTORY: Codes, 1942, § 8202; Laws, 1938, ch. 200; Laws, 1983, ch. 350, § 5, eff from and after July 1, 1983.

JUDICIAL DECISIONS

ANALYSIS

1. Duty of motorists—In general.
2. —To sound horn.
3. Duty of pedestrians.
4. Jury instructions.
5. Questions for jury.
6. Negligence not found.
7.-15. [Reserved for future use.]
16. Under former laws.

1. Duty of motorists—In general.

In an action on behalf of an infant by her parents for injuries sustained by the child when the driver of an automobile drove over her while leaving a parking space in front of the child's parents' home, the trial court properly declined to give a peremptory instruction on liability favorable to the parents where the evidence, when viewed in a light most favorable to the verdict, portrayed circumstances from which reasonable minds could find that the driver had afforded the infant all of the care which was due under the circumstances, including the presence of her parents in the immediate vicinity, and where the evidence did not establish as a matter of law that the driver had violated the duty imposed by statute to "exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway." Haver v. Hinson, 385 So. 2d 605, 1980 Miss. LEXIS 2018 (Miss. 1980).

The absence of a statute to the contrary, a pedestrian has the right to use and travel upon any portion of a public highway at any time of the day or night, his rights and the rights of one operating a vehicle thereupon are mutual, reciprocal, and equal; The operator of a motor vehicle owes to pedestrians walking along the highway the duty to exercise reasonable or ordinary care to avoid injuring them. Smith v. Walton, 271 So. 2d 409, 1973 Miss. LEXIS 1507 (Miss. 1973).

If a pedestrian, standing stationary at the edge of a paved portion of a highway is a child of tender years, or communicates by appearance or action that he is intoxicated, ill, or otherwise not in possession of his faculties, the approaching driver may be bound to anticipate that he will, or that there is sufficient risk that he might, leave his place of safety and come on to the traveled highway. Wendelken v. McMurray, 388 F.2d 553, 1967 U.S. App. LEXIS 4167 (5th Cir. Miss. 1967), cert. denied, 391 U.S. 952, 88 S. Ct. 1850, 20 L. Ed. 2d 864, 1968 U.S. LEXIS 1581 (U.S. 1968).

2. —To sound horn.

In an action for death of pedestrian who was struck by a motorist as she was crossing a highway, it was an error to peremptorily instruct the jury that it was the duty of a driver of the truck to sound his horn. Robinson v. Sims, 227 Miss. 375, 86 So. 2d 318, 1956 Miss. LEXIS 701 (Miss. 1956).

It is unnecessary for a motorist to blow his horn at a pedestrian who knows that the car is overtaking or meeting him or her on the highway, and the purpose of the blowing of horn is to give notice of approach of the automobile. Robinson v. Sims, 227 Miss. 375, 86 So. 2d 318, 1956 Miss. LEXIS 701 (Miss. 1956).

3. Duty of pedestrians.

Where the collision which resulted in the decedent's death occurred at a point in the roadway where there was not a marked crosswalk or an intersection, the decedent owed a duty to yield the right-of-way to the defendant's truck and his failure to do so was negligent. Hornburger v. Baird, 508 F. Supp. 84, 1980 U.S. Dist. LEXIS 16076 (N.D. Miss. 1980).

The absence of a statute to the contrary, a pedestrian has the right to use and travel upon any portion of a public highway at any time of the day or night, his rights and the rights of one operating a vehicle thereupon are mutual, reciprocal, and equal; The operator of a motor vehicle owes to pedestrians walking along the highway the duty to exercise reasonable or ordinary care to avoid injuring them. Smith v. Walton, 271 So. 2d 409, 1973 Miss. LEXIS 1507 (Miss. 1973).

4. Jury instructions.

In a personal injury action arising out of an accident in which a pedestrian was struck by an automobile, an instruction which conformed to the first part of § 63-3-1105, dealing with the duty of a pedestrian to yield the right-of-way to all vehicles operating on the road, but which failed to incorporate the last portion of § 63-3-1105, dealing with the duty of a driver to pedestrians already within a roadway, was incomplete; the instruction as worded was virtually peremptory for defendant, and thus plaintiff was entitled to a new trial. Ross v. Miller, 441 So. 2d 541, 1983 Miss. LEXIS 3025 (Miss. 1983).

In an action on behalf of an infant by her parents for injuries sustained by the child when the driver of an automobile drove over her while leaving a parking space in front of the child's parents' home, the trial court properly declined to give a peremptory instruction on liability favorable to the parents where the evidence, when viewed in a light most favorable to the verdict, portrayed circumstances from which reasonable minds could find that the driver had afforded the infant all of the care which was due under the circumstances, including the presence of her parents in the immediate vicinity, and where the evidence did not establish as a matter of law that the driver had violated the duty imposed by statute to "exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway." Haver v. Hinson, 385 So. 2d 605, 1980 Miss. LEXIS 2018 (Miss. 1980).

In an action for death of pedestrian who was struck by a motorist as she was crossing a highway, it was an error to peremptorily instruct the jury that it was the duty of a driver of the truck to sound his horn. Robinson v. Sims, 227 Miss. 375, 86 So. 2d 318, 1956 Miss. LEXIS 701 (Miss. 1956).

5. Questions for jury.

In a personal injury action, a truck driver who struck a pedestrian was not negligent as a matter of law by virtue of the fact that he did not see the pedestrian in the highway in time to avoid striking him; the issue of the driver's negligence was for the jury to decide. Hood v. Oakley, 519 So. 2d 1236, 1988 Miss. LEXIS 158 (Miss. 1988).

6. Negligence not found.

Trial court properly found that defendant driver breached no duty to a pedestrian he struck and killed as she was walking near an entrance ramp; he was traveling at a prudent speed, keeping a proper lookout for traffic while preparing to merge, and the pedestrian was in his lane of travel when she was hit. Partlow v. McDonald, 877 So. 2d 414, 2003 Miss. App. LEXIS 876 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 858 (Miss. 2004).

7.-15. [Reserved for future use.]

16. Under former laws.

Negligence of pedestrian, under the circumstances, was very slight, consisting of being on the right-hand side of the highway instead of the left side, but off the traveled part of the highway where it was unlikely that any injury would be inflicted by automobiles passing along the same side of the highway in the same direction, because the paved part of the highway was ample for the passage of the vehicles, without leaving the pavement. Evans Motor Freight Lines v. Fleming, 184 Miss. 808, 185 So. 821, 1939 Miss. LEXIS 49 (Miss. 1939).

Issue of injured pedestrian's contributory negligence in walking on right side of highway was properly submitted to jury, under statute requiring pedestrians to walk on left side. Basque v. Anticich, 177 Miss. 855, 172 So. 141, 1937 Miss. LEXIS 163 (Miss. 1937).

Motorist had duty upon observing pedestrian walking on right side of highway with back to automobile to sound horn until pedestrian became aware of approach, and, if pedestrian continued unaware, to slow down and come to stop, if necessary. Avery v. Collins, 171 Miss. 636, 157 So. 695, 158 So. 552, 1934 Miss. LEXIS 254 (Miss. 1934).

Motorist who, although observing that boy walking on right side of road with back to approaching automobile was unaware of automobile, failed to slacken speed, and drove on left side to pass boy, who suddenly, becoming aware of automobile, jumped to left into its path, held liable for death of boy. Avery v. Collins, 171 Miss. 636, 157 So. 695, 158 So. 552, 1934 Miss. LEXIS 254 (Miss. 1934).

Instruction that automobile driver was under no duty to sound horn to warn pedestrian, walking along left side of street, if he saw him so close to automobile that he had no time to do so, held erroneous. Reid v. McDevitt, 163 Miss. 226, 140 So. 722, 1932 Miss. LEXIS 32 (Miss. 1932).

It was duty of automobile driver on left side of street to give signals of his approach to pedestrian walking ahead of him on such side. Reid v. McDevitt, 163 Miss. 226, 140 So. 722, 1932 Miss. LEXIS 32 (Miss. 1932).

RESEARCH REFERENCES

ALR.

Failure to comply with statute regulating travel by pedestrian along highway as affecting right to recovery for injuries or death resulting from collision with automobile. 45 A.L.R.3d 658.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated. 35 A.L.R.4th 1117.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 301, 320.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 457-459.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 481-505, 1341-1524, 1784-1789, 1959.

9 Am. Jur. Trials 427, Child-Pedestrian Accident Cases.

42 Am. Jur. Proof of Facts 2d 1, Negligence of Pedestrian Struck by Motor Vehicle.

50 Am. Jur. Proof of Facts 2d 595, Motorist's Negligence in Striking Person Lying in Road.

CJS.

60A C.J.S., Motor Vehicles §§ 895, 897.

§ 63-3-1107. Pedestrians to use right half of crosswalks.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

HISTORY: Codes, 1942, § 8203; Laws, 1938, ch. 200.

§ 63-3-1109. Solicitation of rides by pedestrians.

No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle.

HISTORY: Codes, 1942, § 8204; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.

Anti-hitchhiking laws: their construction and effect in action for injury to hitchhiker. 46 A.L.R.3d 964.

§ 63-3-1111. Rights of blind and otherwise incapacitated pedestrians crossing at or near intersections or crosswalks; effect of failure to employ cane or guide dog; regulation of use of canes.

(1) Whenever a pedestrian is crossing or attempting to cross a public street or highway, at or near an intersection or crosswalk, guided by a guide dog or carrying in a raised or extended position a cane or walking stick which is metallic or white in color, or white tipped with red, the driver of every vehicle approaching in said intersection or crosswalk shall take such precautions as may be necessary to avoid injuring or endangering such pedestrian, and if injury or danger to such pedestrian can be avoided only by bringing his vehicle to a full stop, he shall bring his said vehicle to a full stop. The word "vehicle," when used in this section, does not include a train operated on railroad tracks.

(2) Nothing contained in this section shall be construed to deprive any totally or partially blind or otherwise incapacitated person, not carrying such a cane or walking stick or not being guided by a dog, of the rights and privileges conferred by law upon pedestrians crossing streets or highways. The failure of such totally or partially blind or otherwise incapacitated person to carry a cane or walking stick or to be guided by a guide dog upon the streets, highways or sidewalks of this state, shall not be held to constitute or be evidence of contributory negligence.

(3) It shall be unlawful for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry in a raised or extended position a cane or walking stick which is metallic or white in color, or white tipped with red.

(4) The violation of any provision of this section shall be punishable by a fine of not more than Twenty-five Dollars ($25.00) or by imprisonment in the county jail for not more than ten (10) days.

HISTORY: Codes, 1942, § 8203.5; Laws, 1950, ch. 330, §§ 1-4; brought forward without change, Laws, 2018, ch. 341, § 9, eff from and after July 1, 2018.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 506.

42 Am. Jur. Proof of Facts 2d 1, Negligence of Pedestrian Struck by Motor Vehicle.

CJS.

60A C.J.S., Motor Vehicles § 885.

§ 63-3-1112. Duty of driver to avoid collision with pedestrian or person propelling human-powered vehicle; warning signal.

Notwithstanding other provisions of this chapter or the provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person.

HISTORY: Laws, 1983, ch. 350, § 6, eff from and after July 1, 1983.

JUDICIAL DECISIONS

1. Negligence not found.

Trial court properly found that defendant driver breached no duty to a pedestrian he struck and killed as she was walking near an entrance ramp; he was traveling at prudent speed, keeping proper lookout for traffic while preparing to merge, and the pedestrian was in his lane of travel when she was hit. Partlow v. McDonald, 877 So. 2d 414, 2003 Miss. App. LEXIS 876 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 858 (Miss. 2004).

RESEARCH REFERENCES

ALR.

Motorist's liability for striking person lying in road. 41 A.L.R.4th 303.

§ 63-3-1113. Driving through safety zone.

No vehicle shall at any time be driven through or within a safety zone.

HISTORY: Codes, 1942, § 8208; Laws, 1938, ch. 200.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 230.

ARTICLE 25.

RECKLESS OR CARELESS DRIVING AND MISCELLANEOUS RULES.

Sec.	
63-3-1201.	Reckless driving.
63-3-1203.	Operation of vehicle under circumstances which interfere with driver's view or control over driving mechanism; interference with driver's view or control by passenger.
63-3-1205.	Driving through defiles or canyons or on mountain highways.
63-3-1207.	Coasting upon down grade.
63-3-1209.	Crossing unprotected fire hose.
63-3-1211.	Throwing, etc., of glass or other injurious material on highway; removal of glass or other injurious material by person removing wrecked or damaged vehicle from highway.
63-3-1213.	Careless driving.
63-3-1215.	Drag racing on public roads prohibited; penalties.

§ 63-3-1201. Reckless driving.

Any person who drives any vehicle in such a manner as to indicate either a wilful or a wanton disregard for the safety of persons or property is guilty of reckless driving. Reckless driving shall be considered a greater offense than careless driving.

Every person convicted of reckless driving shall be punished upon a first conviction by a fine of not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00), and on a second or subsequent conviction he may be punished by imprisonment for not more than ten (10) days or by a fine of not exceeding Five Hundred Dollars ($500.00), or by both.

HISTORY: Codes, 1942, § 8175; Laws, 1938, ch. 200; Laws, 1993, ch. 317, § 2, eff from and after July 1, 1993 (became law without Governor's signature on March 16, 1993).

Cross References — Careless driving, see § 63-3-1213.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

Imposition of standard state assessmen in addition to all court imposed fines or other penalties for speeding, reckless and careless driving violations, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. What constitutes reckless driving, in general.
3. Reckless driving under particular circumstances.
4. —Weaving.
5. Miscellaneous.

1. In general.

The evident purpose of this section [Code 1942, § 8175] is not to punish as criminal acts of simple negligence, or even where gross negligence is shown, in traffic accidents, unless it is of such character as to evince a wilful or wanton disregard of the safety of persons or property on the highways. Sanford v. State, 195 Miss. 896, 16 So. 2d 628, 1944 Miss. LEXIS 333 (Miss. 1944).

2. What constitutes reckless driving, in general.

Conviction for reckless driving did not require that defendant pose a danger to another person, but to himself and his property; therefore, there was sufficient evidence to sustain the conviction due to the fact that defendant posed a danger to himself and an officer where he was proceeding at a high rate of speed on the wrong side of the road. Ouzts v. State, 947 So. 2d 1005, 2006 Miss. App. LEXIS 698 (Miss. Ct. App. 2006).

Reckless driving means the commission of conscious acts or omissions which the driver knows or should know create an unreasonable risk of injury or damage either to the driver and his property, or to the person or property of others. Barnes v. State, 249 Miss. 482, 162 So. 2d 865, 1964 Miss. LEXIS 409 (Miss. 1964).

A motorist is not guilty of reckless driving where there are no persons or vehicles on the highway ahead of and in view of the motorist or where the driving allegedly reckless did not occur on the highway. Gause v. State, 203 Miss. 377, 34 So. 2d 729, 1948 Miss. LEXIS 282 (Miss. 1948).

3. Reckless driving under particular circumstances.

Evidence was sufficient to establish reckless driving by the defendant where (1) a police officer observed the defendant driving at an excessively high rate of speed while weaving in and out of traffic in a 45 mile per hour speed zone and passing other vehicles at an excessive rate of speed, and (2) the officer testified that after questioning the defendant about his speed, the defendant responded and admitted to driving at a speed of 135 miles per hour (although a passenger in his car stated that the defendant drove at 60 to 65 miles per hour) and that he drove at that rate because "I wanted to." Nix v. State, 763 So. 2d 896, 2000 Miss. App. LEXIS 175 (Miss. Ct. App. 2000).

Where defendant drives through a village and he is committing no crime and violating no law, and where two men without possession of any authority undertake to stop him he continues wherein two men shoot at him or at his vehicle and where one of the men jumps into automobile and pursues him and during that pursuit he drives motor vehicle faster than legal speed limit, all as a result of then being pursued by one who had tried to shoot him or the vehicle in which he was riding, the defendant is not guilty of the crime of reckless driving of an automobile. Brown v. State, 227 Miss. 823, 87 So. 2d 84, 1956 Miss. LEXIS 758 (Miss. 1956).

Evidence that state witness approached intersection at a speed of 15 or 20 miles per hour and that accused was approaching intersection from another direction at about the same speed and that accused neglected to be on a constant lookout to see the other vehicle in time to stop his car before striking it, did not establish reckless driving which would subject accused to conviction under this section [Code 1942, § 8175]. Sanford v. State, 195 Miss. 896, 16 So. 2d 628, 1944 Miss. LEXIS 333 (Miss. 1944).

In the absence of proof that accused was driving in a reckless manner or at a rate of speed such as to indicate a wilful or wanton disregard for the safety of persons or property, it is to be assumed that the presence of passengers for hire in his own car would indicate a contrary state of mind. Sanford v. State, 195 Miss. 896, 16 So. 2d 628, 1944 Miss. LEXIS 333 (Miss. 1944).

4. —Weaving.

Evidence was sufficient to support defendant's conviction of reckless driving because the officers testified that defendant was driving at an excessive rate of speed while weaving in and out of his lane, there were other drivers on the road, and the manner in which defendant was driving posed a danger to the other drivers. Johnson v. State, 326 So. 3d 1019, 2021 Miss. App. LEXIS 144 (Miss. Ct. App.), cert. denied, 326 So. 3d 466, 2021 Miss. LEXIS 299 (Miss. 2021).

Where police officers observed the defendant motorist's vehicle weaving from side to side from one traffic lane to the other they were justified in arresting him on a charge of reckless driving. Watts v. State, 196 So. 2d 79, 1967 Miss. LEXIS 1475 (Miss. 1967).

The driving of a vehicle so as to weave back and forth across the line separating two traffic lanes is such reckless driving as to warrant a constable in stopping it, although there was no traffic. Barnes v. State, 249 Miss. 482, 162 So. 2d 865, 1964 Miss. LEXIS 409 (Miss. 1964).

5. Miscellaneous.

Circuit court abused its discretion by implicitly allowing a volunteer firefighter to amend his answer when it granted his motion for summary judgment based upon a qualified immunity defense under the Mississippi Tort Claims Act in a driver's action alleging he was negligent per se for violating the statute because he waived the defense; the firefighter raised a qualified immunity affirmative fourteen months after he filed his answer, and no extreme and unusual circumstances warranted his delay. Cook v. Taylor, 324 So. 3d 333, 2021 Miss. App. LEXIS 81 (Miss. Ct. App.), cert. denied, 322 So. 3d 1292, 2021 Miss. LEXIS 239 (Miss. 2021).

There was no error in failing to give a lesser included offense instruction because reckless driving was not a lesser included offense of the crime of failing to yield to a law enforcement officer; no element of the crime of reckless driving was included in the crime of fleeing a law-enforcement officer. Johnson v. State, 228 So. 3d 933, 2017 Miss. App. LEXIS 112 (Miss. Ct. App.), cert. denied, 229 So. 3d 120, 2017 Miss. LEXIS 379 (Miss. 2017).

Circuit court improperly ruled for a family in their action against the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) because it erroneously applied the legal standard for reckless disregard under the Mississippi Torts Claim Act; MDWFP officers possessed the discretion to request that boaters pull out of the hazardous and high-traffic area of a river, and the MDWFP possessed the authority to regulate the boating traffic on the river and the discretion to do so in a safe manner. Miss. Dep't of Wildlife, Fisheries, & Parks v. Webb, 248 So. 3d 823, 2017 Miss. App. LEXIS 217 (Miss. Ct. App. 2017), rev'd, 248 So. 3d 772, 2018 Miss. LEXIS 127 (Miss. 2018).

Defendant was entitled to a jury instruction on the lesser non-included offense of reckless driving at his trial for aggravated assault, Miss. Code Ann. § 97-3-7 (Rev. 2006), where he requested the charge because a conviction for aggravated assault required proof of intent, the crimes had different elements, and there was conflicting evidence as to whether defendant intended to injure police officers when he failed to stop and engaged them in a multiple-vehicle chase. Brooks v. State, 18 So. 3d 833, 2009 Miss. LEXIS 471 (Miss. 2009).

City police officers, who, while pursuing motorists for reckless driving and breach of peace, shot at and deflated the rear tires of the automobile, were not liable for property damages or personal injuries sustained by the motorists in view of the jury's adoption of the testimony of officers that they did not shoot at the motorist or automobile generally but aimed at the rear tires. State use of Holmes v. Pope, 212 Miss. 446, 54 So. 2d 658, 1951 Miss. LEXIS 468 (Miss. 1951).

Trial court properly granted summary judgment to a county constable under Miss. R. Civ. P. 56 in a personal injury suit because the constable had immunity, under Miss. Code Ann. § 11-46-9(1)(c), for injuries to a father, which occurred when the constable's car collided with his four-wheeler, because there was significant evidence that the father was engaged in criminal activity that had a causal nexus to the accident; the father was driving on a suspended license and pled guilty to reckless driving, however summary judgment against the father's sons was improper because genuine issues of fact existed as to whether the sons were engaged in criminal activity, whether any criminal activity on the part of the sons had a "causal nexus" to the accident, and whether the constable acted with reckless disregard in his pursuit of appellants. Giles v. Brown, 962 So. 2d 612, 2006 Miss. App. LEXIS 930 (Miss. Ct. App. 2006), cert. denied, 962 So. 2d 38, 2007 Miss. LEXIS 477 (Miss. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Section 63-3-1201, speeding in and of itself is not reckless; however, other circumstances may exist which would cause speeding to be considered reckless driving; such circumstances must appear on ticket. Thomas, June 10, 1993, A.G. Op. #93-0267.

For charges to be considered reckless driving there must be a "wilful and wanton disregard for the safety of persons or property." Gordon, Sept. 21, 2001, A.G. Op. #01-0574.

RESEARCH REFERENCES

ALR.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense. 52 A.L.R.2d 1337.

Reckless driving as lesser included offense of driving while intoxicated or similar charge. 10 A.L.R.4th 1252.

Statute prohibiting reckless driving: Definiteness and certainty. 52 A.L.R.4th 1161.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 337 et seq.

46 Am. Jur. Proof of Facts 2d 647, Driver's Negligence in Backing Up.

CJS.

61A C.J.S., Motor Vehicles §§ 1547 et seq.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-3-1203. Operation of vehicle under circumstances which interfere with driver's view or control over driving mechanism; interference with driver's view or control by passenger.

(1) No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.

HISTORY: Codes, 1942, § 8220; Laws, 1938, ch. 200.

RESEARCH REFERENCES

Am. Jur.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 1802.

46 Am. Jur. Proof of Facts 2d 647, Driver's Negligence in Backing Up.

50 Am. Jur. Proof of Facts 2d 389, Premises Liability: Obstruction of Visibility at Intersection.

50 Am. Jur. Proof of Facts 2d 677, Liability of Motor Vehicle Passenger for Accident.

§ 63-3-1205. Driving through defiles or canyons or on mountain highways.

The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of 200 feet along the highway, shall give audible warning with the horn of such motor vehicle.

HISTORY: Codes, 1942, § 8221; Laws, 1938, ch. 200.

§ 63-3-1207. Coasting upon down grade.

The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.

The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

HISTORY: Codes, 1942, § 8222; Laws, 1938, ch. 200.

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 733.

CJS.

60A C.J.S., Motor Vehicles § 678.

§ 63-3-1209. Crossing unprotected fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

HISTORY: Codes, 1942, § 8224; Laws, 1938, ch. 200.

§ 63-3-1211. Throwing, etc., of glass or other injurious material on highway; removal of glass or other injurious material by person removing wrecked or damaged vehicle from highway.

No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

HISTORY: Codes, 1942, § 8225; Laws, 1938, ch. 200.

§ 63-3-1213. Careless driving.

Any person who drives any vehicle in a careless or imprudent manner, without due regard for the width, grade, curves, corner, traffic and use of the streets and highways and all other attendant circumstances is guilty of careless driving. Careless driving shall be considered a lesser offense than reckless driving.

Every person convicted of careless driving shall be punished by a fine of not less than Five Dollars ($5.00) nor more than Fifty Dollars ($50.00).

HISTORY: Laws, 1993, ch. 317, § 1, eff from and after July 1, 1993 (became law without Governor's signature on March 16, 1993).

Cross References — Reckless driving, see § 63-3-1201.

Imposition of standard state assessmen in addition to all court imposed fines or other penalties for speeding, reckless and careless driving violations, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. Instructions.
3. Probable cause.
4. Preservation for review.
5. Evidence sufficient.

1. Constitutionality.

The statute is not unconstitutionally vague as, although the language of the statute was broad, ordinary people could understand its meaning. United States v. Escalante, 239 F.3d 678, 2001 U.S. App. LEXIS 614 (5th Cir. Miss. 2001).

This section is not unconstitutionally vague, notwithstanding the contention that the phrase "careless or imprudent manner" is vague and subjective and provides no objective criteria by which an individual is put on notice of what conduct the statute proscribes. Leuer v. City of Flowood, 744 So. 2d 266, 1999 Miss. LEXIS 216 (Miss. 1999).

2. Instructions.

The court properly instructed the jury with regard to careless, rather than reckless, driving where the defendant was cited for careless driving after he was stopped after an officer observed him driving 20 to 25 m.p.h. in a 35 m.p.h. zone and weaving between 2 northbound lanes. Varvaris v. City of Pearl, 723 So. 2d 1215, 1998 Miss. App. LEXIS 986 (Miss. Ct. App. 1998).

3. Probable cause.

Because a police officer observed defendant's vehicle cross the right lane fog line once, and then again approach or "bump" the fog line, and the video evidence from the officer's car camera, while unclear, did not directly contradict the officer's testimony, there was sufficient evidence that the officer had probable cause to believe that defendant had driven in a careless or imprudent manner, without due regard for the width and use of the streets and highways, and to stop defendant's vehicle. Martin v. State, 240 So. 3d 1047, 2017 Miss. LEXIS 424 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 2592, 201 L. Ed. 2d 307, 2018 U.S. LEXIS 3234 (U.S. 2018).

Testimony from the arresting officer that he observed defendant's truck pass so close to a deputy that the outside mirror could have struck the officer and that the truck then ran off the road provided sufficient probable cause for a traffic stop based on careless driving. Ludwig v. State, 122 So. 3d 1229, 2013 Miss. App. LEXIS 313 (Miss. Ct. App. 2013).

Defendants' convictions for possession of more than five kilograms of marijuana were appropriate because, under Miss. Code Ann. § 63-3-1213, defendants' vehicle was seen driving in a careless or imprudent manner and the deputy had the authority to stop them. When defendants acted nervous, the deputy's retrieval of a drug-detecting dog was appropriate and the drug-detecting dog's positive alerts created probable cause for the deputy to search the trunk of the rental car. Shelton v. State, 45 So. 3d 1203, 2010 Miss. App. LEXIS 141 (Miss. Ct. App., cert. denied, 49 So. 3d 636, 2010 Miss. LEXIS 548 (Miss. 2010), cert. denied, 2010 Miss. LEXIS 553 (Miss. Oct. 21, 2010).

Court could not say that it was clear that a police officer's observation of a driver driving in the middle of two lanes did not or could not constitute a violation of Miss. Code Ann. § 63-3-1213, nor could it say that there was no objective basis for the stop of the driver's vehicle; thus the case was not one in which the officer acted without any objective reason or on the basis of a purely subjective feeling or "hunch." On the contrary, the officer did have an objective, reasonable suspicion that the driver had committed the traffic violation of careless driving, even though he was ultimately acquitted of the careless driving charge. Adams v. City of Booneville, 910 So. 2d 720, 2005 Miss. App. LEXIS 217 (Miss. Ct. App. 2005).

There was probable cause for the stop of a driver's vehicle because the time of night was very late (2:30 a.m.), the particular night, New Year's Eve, was one on which persons were widely known to celebrate and often consume alcohol, and in the officer's observation, the vehicle was traveling without due regard for the width and use of the highway by traveling in the middle of two lanes of traffic, and the reserve officer accompanying the officer saw the vehicle swerve. All of these circumstances served to bolster the conclusion that the driver appeared to the officer to be driving in violation of the careless driving statute, Miss. Code Ann. § 63-3-1213. Adams v. City of Booneville, 910 So. 2d 720, 2005 Miss. App. LEXIS 217 (Miss. Ct. App. 2005).

Trial court properly denied defendant's motion to suppress cocaine found during a strip search conducted after defendant's arrest for driving under the influence. There was probable cause for the traffic stop where a police officer witnessed the vehicle defendant was driving approach the curb twice; the presence or absence of traffic is not controlling to a determination of carelessness. Henderson v. State, 878 So. 2d 246, 2004 Miss. App. LEXIS 657 (Miss. Ct. App. 2004).

Defendant's conviction for driving under the influence, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(a), was proper where there was probable cause for the stop because she had repeatedly crossed over the center line and that constituted careless driving pursuant to Miss. Code Ann. § 63-3-1213; thus, there was probable cause to believe that a traffic offense had been committed and defendant was properly stopped for further police action. Saucier v. City of Poplarville, 858 So. 2d 933, 2003 Miss. App. LEXIS 1025 (Miss. Ct. App. 2003).

4. Preservation for review.

Defendant's convictions for driving under the influence of an intoxicating liquor, careless driving, and driving without a seatbelt were appropriate because defendant failed to raise any of the issues he complained of on appeal in his motion for a directed verdict or new trial and because the facts of the case provided sufficient evidence to convict. Jones v. State, 958 So. 2d 840, 2007 Miss. App. LEXIS 423 (Miss. Ct. App. 2007).

5. Evidence sufficient.

Evidence was sufficient to support defendant's convictions of running a red light and careless driving where a police officer testified that she observed defendant drive his entire vehicle over a concrete median and saw him run a red light. Lobo v. City of Ridgeland, 135 So. 3d 148, 2013 Miss. App. LEXIS 300 (Miss. Ct. App. 2013).

Sufficient evidence supported defendant's conviction for careless driving because a police sergeant, who responded to two independent calls from drivers who reported that defendant was driving carelessly, testified that defendant was kind of drifting from right to left, that it was pretty obvious that defendant could not maintain control of defendant's vehicle to keep it in defendant's direct lane, and that defendant did not stop when the sergeant turned on the police car's blue lights and did not come to a complete stop at a stop sign. McMurtry v. State, 105 So. 3d 395, 2012 Miss. App. LEXIS 531 (Miss. Ct. App. 2012).

OPINIONS OF THE ATTORNEY GENERAL

Speeding does not in and of itself constitute careless driving; speeding with other attendant circumstances would constitute careless driving. Mixon, March 10, 1994, A.G. Op. #93-0883.

A violation of the statute for careless driving is not based solely on whether traffic is present but should be based on all the combined factors listed in the statute. Gordon, Sept. 21, 2001, A.G. Op. #01-0574.

RESEARCH REFERENCES

ALR.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense. 52 A.L.R.2d 1337.

Reckless driving as lesser included offense of driving while intoxicated or similar charge. 10 A.L.R.4th 1252.

Statute prohibiting reckless driving: definiteness and certainty. 52 A.L.R.4th 1161.

Negligence or contributory negligence of motorist in failing to proceed in accordance with turn signal given. 84 A.L.R.4th 124.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 358.

CJS.

60A C.J.S., Motor Vehicles §§ 582-587, 652 et seq.

§ 63-3-1215. Drag racing on public roads prohibited; penalties.

(1) No person shall drive any vehicle upon the public roads in this state in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, speed competition, drag race, test or physical endurance, exhibition, or purpose of making a speed record.

(2) For the purposes of this section "drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out distance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of

such vehicle or vehicles within a certain distance or time limit on the public roads of this state.

(3) For the purposes of this section "racing" means the use of one or more vehicles in an attempt to out gain, out distance, or prevent another vehicle from passing, or to test the physical stamina or endurance of drivers over long distance driving routes on the public roads of this state.

(4) Any person convicted of violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned not more than six (6) months, or both.

(5) The prohibitions contained in this section do not apply to events sanctioned by local governing authorities.

HISTORY: Laws, 2006, ch. 408, § 1, eff from and after July 1, 2006.

ARTICLE 27.

JOHN PAUL FRERER BICYCLE SAFETY ACT.

Sec.

63-3-1301. Short title.
63-3-1303. Applicability.
63-3-1305. "Bicycle lane" defined; motor vehicle operator to avoid blocking lane and to yield to bicyclist in lane.
63-3-1307. Rights and duties of bicyclist operating bicycle upon roadway.
63-3-1309. Rights and duties of operator of motor vehicle with respect to bicycles.
63-3-1311. Signaling of turns by bicyclist.
63-3-1313. Prohibition against harassing, taunting or maliciously throwing object at or near bicyclist; penalties.
63-3-1315. Electric bicycles.

§ 63-3-1301. Short title.

This article shall be known and may cited as the "John Paul Frerer Bicycle Safety Act."

HISTORY: Laws, 2010, ch. 414, § 1, eff from and after July 1, 2010.

§ 63-3-1303. Applicability.

(1) This article applies to bicycles whenever they are operated upon any roadway or highway, or upon any path set aside for the exclusive use of bicycles.

(2) A person riding a bicycle upon a roadway has all of the rights and is subject to all of the duties applicable to the driver of a vehicle, except as may be otherwise provided in this article.

HISTORY: Laws, 2010, ch. 414, § 2, eff from and after July 1, 2010.

§ 63-3-1305. "Bicycle lane" defined; motor vehicle operator to avoid blocking lane and to yield to bicyclist in lane.

(1) For purposes of this section, "bicycle lane" means a portion of the

roadway or a lane separated from the roadway that has been designated by striping, pavement markings and signage for the preferential or exclusive use of bicyclists.

(2) Whenever a bicycle lane has been provided adjacent to a roadway, the operator of a motor vehicle may not block the bicycle lane to oncoming bicycle traffic and shall yield to a bicyclist in the bicycle lane before entering or crossing the lane.

(3) This section does not apply to vehicles engaged in providing public services, including, but not limited to, fire engines, police vehicles, ambulances, public utility vehicles, waste management trucks and tow trucks.

HISTORY: Laws of 2010, ch. 414, § 3, effective from and after July 1, 2010.

§ 63-3-1307. Rights and duties of bicyclist operating bicycle upon roadway.

(1) Every bicyclist operating a bicycle upon a roadway less than the normal speed of traffic shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following conditions:

(a) When it is unsafe to do so;

(b) When overtaking and passing another bicycle or vehicle proceeding in the same direction;

(c) When preparing for or making a left turn at an intersection or into a private road or driveway;

(d) When proceeding straight in a place where right turns are permitted; and

(e) When necessary to avoid hazardous conditions, including, but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards or a lane of substandard width that makes it unsafe to continue along the right portion of the way. For purposes of this paragraph, "lane of substandard width" means a lane that is too narrow for a bicycle and a vehicle to travel safely side by side in the lane.

(2) When operating a bicycle upon a roadway, a bicyclist must exercise due care when passing or overtaking a vehicle that is standing or proceeding in the same direction.

(3) Bicyclists riding bicycles upon a roadway shall not ride more than two (2) abreast, except on paths or parts of roadways set aside for exclusive use of bicycles.

HISTORY: Laws, 2010, ch. 414, § 4, eff from and after July 1, 2010.

§ 63-3-1309. Rights and duties of operator of motor vehicle with respect to bicycles.

(1) While passing a bicyclist on a roadway, a motorist shall leave a safe distance of not less than three (3) feet between his vehicle and the bicyclist and shall maintain such clearance until safely past the bicycle.

(2) A motor vehicle operator may pass a bicycle traveling in the same direction in a nonpassing zone with the duty to execute the pass only when it is safe to do so.

(3) The operator of a vehicle that passes a bicyclist proceeding in the same direction may not make a right turn at any intersection or into any highway or driveway unless the turn can be made with reasonable safety.

HISTORY: Laws, 2010, ch. 414, § 5, eff from and after July 1, 2010.

§ 63-3-1311. Signaling of turns by bicyclist.

(1) A bicyclist shall indicate a right turn by extending the left arm upward, by raising the left arm to the square, or by extending the right arm horizontally to the right.

(2) A bicyclist shall indicate a left turn by extending the left arm horizontally.

(3) A bicyclist shall indicate stopping or decreasing speed by extending the left arm or the right arm downward.

(4) A bicyclist is not required to give the signals continuously, if the hand or arm is needed to control the bicycle.

HISTORY: Laws, 2010, ch. 414, § 6, eff from and after July 1, 2010.

§ 63-3-1313. Prohibition against harassing, taunting or maliciously throwing object at or near bicyclist; penalties.

It is unlawful to harass, taunt or maliciously throw an object at or in the direction of any person riding a bicycle.

A person convicted of a violation of this section shall be fined One Hundred Dollars ($100.00) for the first offense, Five Hundred Dollars ($500.00) for the second offense, and a fine of Two Thousand Five Hundred Dollars ($2,500.00) and imprisonment in the county jail for seven (7) days for the third and subsequent offenses.

HISTORY: Laws, 2010, ch. 414, § 7, eff from and after July 1, 2010.

Cross References — Imposition of standard state fee in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 63-3-1315. Electric bicycles.

(1) Except as specifically provided otherwise, an electric bicycle or an operator of an electric bicycle shall be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the rider of a bicycle. An electric bicycle is a vehicle to the same extent as a bicycle.

(2) An electric bicycle or a person operating an electric bicycle is not subject to the provisions of this code relating to financial responsibility, driver's

licenses, registration, certificates of title, off-road vehicles, dirt bikes, all-terrain vehicles and license plates. An electric bicycle is not a motor vehicle.

(3) On and after January 1, 2022, manufacturers and distributors of electric bicycles shall apply a label that is permanently affixed, in a prominent location, to each electric bicycle. The label shall contain the classification number, top assisted speed, and motor wattage of the electric bicycle, and shall be printed in Arial font in at least 9-point type.

(4) A person shall not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or engagement of an electric bicycle, unless the label indicating the classification required in subsection (3) of this section is replaced after modification.

(5) An electric bicycle shall comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission (16 C.F.R. part 1512).

(6) An electric bicycle shall operate in a manner so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

(7) An electric bicycle may be ridden in places where bicycles are permitted, including but not limited to, streets, highways, roadways, bicycle lanes, and bicycle or multi-use paths. Following notice and a public hearing, a municipality, local authority or state agency having jurisdiction over a bicycle or multi-use path may prohibit the operation of a class 1 electric bicycle or class 2 electric bicycle on that path, if it finds that such a restriction is needed for safety reasons or compliance with other laws or legal obligations.

A municipality, local authority or state agency having jurisdiction over a bicycle or multi-use path may prohibit the operation of a class 3 electric bicycle on that path.

This subsection (7) shall not apply to a trail that is specifically designated as nonmotorized and that has a natural surface tread that is made by clearing and grading the native soil with no added surfacing materials. A municipality, local authority or state agency having jurisdiction over a trail described in this subsection may regulate the use of an electric bicycle on that trail.

(8) No person under the age of sixteen (16) may operate a class 3 electric bicycle. A person under the age of sixteen (16) may ride as a passenger on a class 3 electric bicycle that is designed to accommodate passengers.

(9) All class 3 electric bicycles must be equipped with a speedometer that displays the speed the bicycle is traveling in miles per hour.

HISTORY: Laws, 2021, ch. 355, § 1, eff from and after July 1, 2021.

ARTICLE 29.

OPERATION OF PERSONAL DELIVERY DEVICES

Sec.
63-3-1331. Operation of personal delivery devices in pedestrian areas.

§ 63-3-1331. Operation of personal delivery devices in pedestrian areas.

(1) A personal delivery device must:

(a) Yield to all other traffic, including pedestrians;

(b) Refrain from transporting hazardous materials regulated under the Hazardous Materials Transportation Act, 49 USC Section 5103, that are required to be placarded under 49 CFR Part 172, Subpart F; and

(c) Be equipped with:

(i) A marker clearly stating the name and contact information of the owner and a unique identification number;

(ii) A braking system enabling the device to come to a controlled stop; and

(iii) If operated between sunset and sunrise, lighting on both the front and rear which is visible in clear weather from at least five hundred (500) feet.

(2) A personal delivery device may be operated in a pedestrian area at speeds of no more than ten (10) miles per hour. For purposes of this section, a pedestrian area is a sidewalk, crosswalk, school crossing zone or safety zone.

(3) Personal delivery devices and personal delivery device operators are not subject to requirements or laws applicable to motor vehicles.

(4) Personal delivery devices may be prohibited by local resolutions or ordinances if the local government determines that the prohibition is necessary, in the interest of public safety. This section does not affect the authority of a local government's law enforcement officers to enforce the laws of this state relating to the operation of a personal delivery device.

(5) A business entity that operates a personal delivery device under this section shall maintain an insurance policy that includes general liability coverage of not less than One Hundred Thousand Dollars ($100,000.00) for damages arising from the operation of the personal delivery device.

HISTORY: Laws, 2022, ch. 439, § 1, eff from and after July 1, 2022.

Editor's Notes — Laws, 2022, ch. 439, § 12, provides:
"SECTION 12. Section 1 of this act shall be codified in Title 63, Chapter 3, Mississippi Code of 1972."

CHAPTER 5.

SIZE, WEIGHT AND LOAD

Sec.

63-5-1. Short title.
63-5-3. Construction.
63-5-5. Definitions.
63-5-7. Operation of vehicle in violation of chapter.
63-5-9. Applicability of chapter.
63-5-11. Power and authority of local authorities to alter limitations.
63-5-13. Outside width of vehicles.
63-5-15. Side projecting loads on passenger vehicles.
63-5-17. Height of vehicles.
63-5-19. Vehicle length limitations; generally.
63-5-21. Vehicle length limitations; exceptions.
63-5-23. Front projecting loads on vehicles.
63-5-25. Connections for trailers and towed vehicles.
63-5-27. Wheel and axle loads.
63-5-29. Gross weight of vehicle and loads; Table I.
63-5-31. Gross weight of vehicle and loads; Table II.
63-5-33. Gross weight of vehicle and loads; Table III [Subsection (5) repealed effective July 1, 2025].
63-5-34. Gross weight of vehicle and loads; exceptions.
63-5-35. Factors to be considered by Mississippi Transportation Commission before increasing load limits.
63-5-37. Axles suspended by equalizing system.
63-5-39. Inspection of certain vehicles upon registration; special permit; operation of vehicle or combination of vehicles in excess of gross weight limits.
63-5-41. "Gross weight" and "gross load" defined.
63-5-43. Enforcement of Sections 63-5-29 through 63-5-41.
63-5-45. Transportation of perishable commodities of foreign import discharged at Mississippi ports.
63-5-47. Transportation of commodities to or from terminal or port facilities on Mississippi River.
63-5-49. Inspection and weighing of vehicles; assessment of penalty against owner or operator of overweight vehicle; removal of load in excess of legal limit; failure to stop and submit vehicle to inspection or weighing; escort of superload vehicle.
63-5-51. Special permits for excess size and weight; special permits for commercial movement of recreational vehicles and motor homes that comply with vehicle width requirements.
63-5-52. Special permits for vehicles transporting heavy equipment with nondivisible loads having gross vehicle weight of 150,000 pounds or less; transference of permit from one pulling unit to another; forestry permits for vehicles having gross vehicle weight of 100,000 pounds or less and dimensions of 14 feet wide and 14 feet high or less.
63-5-53. Liability for damage to highway or structure caused by vehicle.
63-5-55. Spilling loads on highways.

§ 63-5-1. Short title.

This chapter may be cited as the Uniform Highway Traffic Regulation Law – Size, Weight and Load Regulations.

HISTORY: Codes, 1942, § 8126; Laws, 1938, ch. 200.

Cross References — Uniform Highway Traffic Regulation Law – Rules of the Road, see §§ 63-3-1 et seq.

Uniform Highway Traffic Regulation Law – Equipment and Identification Regulations, see §§ 63-7-1 et seq.

Uniform Highway Traffic Regulation Law – Traffic Violations Procedure, see §§ 63-9-1 et seq.

Authority of county board of supervisors to declare unusual or uncommon load or weight to be conveyed on or over county roads, etc, see § 65-7-43.

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property. 21 A.L.R.3d 989.

Automobiles: construction and operation of statutes or regulations restricting the weight of motor vehicles or their loads. 45 A.L.R.3d 503.

Authority of Public Official, Whose Duties or Functions Generally Do Not Entail Traffic Stops, To Effectuate Traffic Stop of Vehicle. 18 A.L.R.6th 519.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 183, 208, 213.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

§ 63-5-3. Construction.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: Codes, 1942, § 8282; Laws, 1938, ch. 200.

§ 63-5-5. Definitions.

For purposes of this chapter, the meanings ascribed to the words and phrases in Article 3 of Chapter 3 of this title, shall be fully applicable to this chapter.

HISTORY: Codes, 1942, § 8126; Laws, 1938, ch. 200.

§ 63-5-7. Operation of vehicle in violation of chapter.

It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter or otherwise in violation of this chapter.

HISTORY: Codes, 1942, § 8264; Laws, 1938, ch. 200.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 212.

CJS.

61A C.J.S., Motor Vehicles §§ 1709-1714.

§ 63-5-9. Applicability of chapter.

The provisions of this chapter governing size, weight and load shall not apply to:

(a) Fire apparatus;

(b) Road machinery;

(c) Vehicles operated under the terms of a special permit issued as provided in this chapter;

(d) Any machinery or equipment used for normal farm purposes only, having a width in excess of the maximum requirements prescribed by this chapter, where such movement is performed during daylight hours, within a radius of fifty (50) miles of the point of origin thereof, and no part of such operation or movement is upon any highway designated and known as a part of the National System of Interstate and Defense Highways, or accesses thereto. Such machinery or towing vehicle shall be equipped with reflector lights, front and rear, and a blinking light clearly visible from the front and rear;

(e) Any machinery or equipment intended to be used for normal farm purposes only and being delivered by an equipment dealer to a customer, having a width in excess of the maximum requirements prescribed by this chapter, where such movement is performed during daylight hours, and no part of such operation or movement is upon any highway designated and known as a part of the National System of Interstate and Defense Highways, or accesses thereto. Such machinery or any vehicle towing such equipment shall be equipped with reflector lights, front and rear, and a blinking light clearly visible from the front and rear;

(f) Rubber-tire vehicles used for construction, warehousing, transportation of equipment or material or for other purposes not exempted under this section if such vehicles are not designed primarily for use or operation on a public road, street or highway; provided, that such vehicles shall not be operated on any public road, street or highway of this state except along and adjacent to the site where such vehicles are primarily used. Nothing in this paragraph shall be construed as requiring the vehicles described in this paragraph to obtain a motor vehicle license tag or a motor vehicle inspection sticker when operated on a public road, street or highway in accordance with the provisions of this paragraph; or

(g) Rubber-tire vehicles designed or adapted to be used exclusively in the preparation and loading of chemicals or other material for aerial agricultural application to crops, where such movement is performed during daylight hours, within a radius of fifty (50) miles of the point of origin thereof, and no part of such operation or movement is upon any highway designated and known as a part of the National System of Interstate and Defense Highways.

HISTORY: Codes, 1942, § 8264; Laws, 1938, ch. 200; Laws, 1976, ch. 351; Laws, 1988, ch. 400; Laws, 2002, ch. 505, § 1; Laws, 2003, ch. 433, § 3, eff from and after July 1, 2003.

JUDICIAL DECISIONS

1. In general.

The exception of implements of husbandry temporarily moved upon a highway does not apply to a farm tractor driven thirty miles along a highway from one farm of its owner to another. Farmer v. Humphreys County Memorial Hospital, 236 Miss. 35, 109 So. 2d 356, 1959 Miss. LEXIS 291 (Miss. 1959).

§ 63-5-11. Power and authority of local authorities to alter limitations.

The maximum size and weight of vehicles specified in this chapter shall be lawful throughout the state, and local authorities shall have no power or authority to alter the limitations stated in this chapter except as express authority to do so may be granted in this chapter.

HISTORY: Codes, 1942, § 8264; Laws, 1938, ch. 200.

Cross References — Power of county board of supervisors to declare what is an unusual or uncommon load or weight to be conveyed on or over roads or bridges, see § 65-7-43.

Power of county board of supervisors, by order, to regulate tire width and maximum load of any vehicle using public roads and bridges, see §§ 65-7-45 et seq.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 209, 211.

§ 63-5-13. Outside width of vehicles.

(1) Except as otherwise provided in this section, the total outside width of any vehicle, exclusive of required safety devices, or the load thereon shall not exceed eight and one-half (8-½) feet; provided, however, that appurtenances on recreational vehicles shall be allowed so long as they are inside the exterior rearview mirrors of the recreational vehicle or inside the exterior rearview mirrors of the vehicle towing the recreational vehicle, and such mirrors do not extend further than necessary to obtain the appropriate field of view.

(2) The total outside load width of any vehicle hauling unprocessed forest

products on public roads, streets or highways, other than interstate highways, shall not exceed nine and one-half (9-½) feet if such products may not be shortened without rendering them useless for the end product for which they were cut; provided, however, the total outside vehicle width of such a vehicle, exclusive of required safety devices and the load of such vehicle, shall not exceed eight and one-half (8-½) feet.

(3) The total outside width of a farm tractor shall not exceed ten (10) feet, except that farm tractors shall not be operated upon the interstate highways without a special permit from the Mississippi Department of Transportation.

(4) A vehicle designed and especially constructed to transport raw cotton from harvest to the cotton gin may have a total outside width not to exceed nine (9) feet whenever any such vehicle is being operated within a radius of fifty (50) miles of the vehicle's home base or its contractual customer.

HISTORY: Codes, 1942, § 8265; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 1; ch. 430; Laws, 1983, ch. 428, § 1; Laws, 1999, ch. 492, § 1; Laws, 2000, ch. 318, § 2; Laws, 2001, ch. 596, § 55; Laws, 2002, ch. 405, § 1, eff from and after July 1, 2002.

JUDICIAL DECISIONS

1. In general.

The limitation of the width of farm tractors moving upon a highway, to ten feet, includes attachments thereto. Farmer v. Humphreys County Memorial Hospital, 236 Miss. 35, 109 So. 2d 356, 1959 Miss. LEXIS 291 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property. 21 A.L.R.3d 989.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 210.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 747.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

§ 63-5-15. Side projecting loads on passenger vehicles.

No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle or extending more than six inches beyond the line of the fenders on the right side thereof.

HISTORY: Codes, 1942, § 8266; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.
Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

Liability for injury or damage caused by collision with portion of load projecting beyond rear or side of motor vehicle or trailer. 21 A.L.R.3d 371.

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 210.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 747.

CJS.
60 C.J.S., Motor Vehicles § 49, 50.

§ 63-5-17. Height of vehicles.

No vehicle unladen or with load shall exceed a height of thirteen feet, six inches. However, no person, firm or corporation, or the State of Mississippi or any subdivision thereof, shall be required to raise, alter, construct or reconstruct any underpass, wire, pole, trestle, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. Full liability for damage to any structure caused by any vehicle having a height in excess of twelve feet, six inches, shall be borne entirely by the motor carrier or operator of the vehicle.

HISTORY: Codes, 1942, § 8267; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 2; Laws, 1950, ch. 480; Laws, 1956, ch. 380; Laws, 1958, ch. 502; Laws, 1962, ch. 530; Laws, 1971, ch. 354, § 1, eff from and after passage (approved March 15, 1971).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.

1. In general.
In view of the maximum height permissible for vehicles under this section [Code 1942, § 8267], a railroad is negligent in maintaining an underpass not affording sufficient clearance for such vehicles. Illinois C. R. Co. v. Farris, 259 F.2d 445, 1958 U.S. App. LEXIS 4753 (5th Cir. Miss. 1958).

2. Applicability.
In a case in which it was undisputed that the height of the load hauled by a trucking company exceeded twelve feet, six inches, in violation of Miss. Code Ann. § 63-5-17, the trucking company was not strictly liable for the damage to a car when the load snagged a telephone wire and caused a telephone company's pole to fall and damage the car. The statute's imposition of strict liability did not apply to claims for damage to "structures" other than the overhead structure or structure supporting the overhead wire, thus the statute was inapplicable to the claims for recovery for damage to the car or for personal injuries." Moncrief v. Bennett Truck Transp., LLC, 631 F. Supp. 2d 841, 2009 U.S. Dist. LEXIS 46915 (S.D. Miss. 2009).

RESEARCH REFERENCES

ALR.
Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death or damage to private property. 21 A.L.R.3d 989.

Liability for damage to highway or

bridge caused by size or weight of motor vehicle or load. 53 A.L.R.3d 1035.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 210.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 747 et seq

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 63-5-19. Vehicle length limitations; generally.

(1) Except as otherwise provided in this section, no single vehicle, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(2) No semitrailer operating in a truck tractor-semitrailer combination and no trailer drawn by a motor vehicle shall exceed a length of fifty-three (53) feet.

(3) No semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination and no trailer operating in a double trailer combination drawn by a motor vehicle shall exceed a length of thirty (30) feet.

(4) No semitrailer or trailer combinations in excess of two (2) units, excluding the towing motor vehicle, shall be allowed to operate on the highways of this state.

(5) No motor home shall have an overall length exclusive of front and rear bumpers, in excess of forty-five (45) feet.

(6) The load upon the rear vehicle of a combination of vehicles transporting forest or agricultural products in their natural state shall not project more than twenty-eight (28) feet beyond the rear axle of the vehicle except in the special circumstance hereinafter prescribed. If such products project more than twenty-eight (28) feet beyond the rear axle and, due to the end use for which they are intended (such as tall utility poles or light poles or the like), such products cannot be shortened without rendering them useless for the finished product for which they have been cut, then such special circumstance may be considered good cause for the obtaining of a permit which shall be procured pursuant to Section 63-5-51 before vehicles transporting such products may operate. Except as otherwise provided in Section 63-5-21 or 63-7-47(2), any vehicle transporting projecting loads as described in this subsection that extend four (4) feet or more beyond the rear or body of the vehicle shall operate only during daylight hours, and the load on vehicles designed to transport forestry products shall be secured by at least two (2) chains, two (2) wire ropes, or two (2) nylon straps, one (1) positioned behind the front bolster and one (1) in front of the back bolster.

(7) Except as otherwise provided in Section 63-5-21 or 63-7-47(2), the rear projecting load of any vehicle operating during the period described under Section 63-7-11 may not extend four (4) feet or more beyond the rear or body of the vehicle, or as otherwise allowable by federal law.

(8) The length limitations on projecting loads prescribed in this section do not apply to a single vehicle or the rear vehicle of a combination of vehicles

designed for on-farm delivery and unloading of any agricultural product, in its natural or manufactured form, which is fitted with an auger or similar unloading device permanently affixed to the vehicle that extends no more than eight (8) feet horizontally beyond the rear or body of the vehicle provided that no portion of such device which extends four (4) feet or more beyond the rear or body of the vehicle is less than seven (7) feet above the roadway surface. However, any such vehicle may not be operated on the public highways, roads or streets of this state during the period described under Section 63-7-11.

(9) A vehicle designed and especially constructed to transport raw cotton from harvest to the cotton gin may have a total overall length not to exceed fifty (50) feet whenever any such vehicle is being operated within a radius of fifty (50) miles of the vehicle's home base or its contractual customer.

HISTORY: Codes, 1942, § 8267; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 2; Laws, 1950, ch. 480; Laws, 1956, ch. 380; Laws, 1958, ch. 502; Laws, 1962, ch. 530; Laws, 1971, ch. 354, § 1; ch. 317; Laws, 1980, ch. 316, § 1; Laws, 1982, ch. 447, § 1; Laws, 1983, ch. 428, § 2; Laws, 1995, ch. 629, § 1; Laws, 2000, ch. 318, § 3; Laws, 2001, ch. 557, § 1; Laws, 2002, ch. 405, § 2; Laws, 2003, ch. 460, § 1, eff from and after passage (approved Mar. 23, 2003); Laws, 2019, ch. 374, § 1, eff from and after July 1, 2019; Laws, 2022, ch. 434, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment inserted "or 63-7-47(2)" in (6) and (7).

Cross References — Additional exceptions to maximum vehicle length, see § 63-5-21.

OPINIONS OF THE ATTORNEY GENERAL

The towing of more than two trailers is prohibited by Section 63-5-19(4), however, it is legal to pull two trailers simultaneously; with regard to the maximum length of the towing vehicle and the trailers, subsection (1) limits a vehicle to a length of no more than forty (40) feet while subsection (3) limits trailers drawn in a double trailer combination to a length of thirty (30) feet each. Joseph, May 9, 2003, A.G. Op. 03-0205.

RESEARCH REFERENCES

ALR.

Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death or damage to private property. 21 A.L.R.3d 989.

Liability for damage to highway or bridge caused by size or weight of motor vehicle or load. 53 A.L.R.3d 1035.

Federal regulation of tractor-trailer configuration under the Surface Transportation Assistance Act of 1982 (49 USCS Appendix §§ 2301 et seq). 77 A.L.R. Fed. 350.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 210.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 747.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 63-5-21. Vehicle length limitations; exceptions.

The length limitations provided in Section 63-5-19 shall not apply to vehicles operated at nighttime by a public utility transporting poles, pipes, machinery or other objects of a structural nature which cannot readily be dismembered when required for emergency repair of public service facilities or properties. However, in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of such load.

HISTORY: Codes, 1942, § 8267; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 2; Laws, 1950, ch. 480; Laws, 1956, ch. 380; Laws, 1958, ch. 502; Laws, 1962, ch. 530; Laws, 1971, ch. 354, § 1; Laws, 1982, ch. 447, § 2; Laws, 2001, ch. 557, § 2, eff from and after July 1, 2001.

RESEARCH REFERENCES

ALR.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without, or with improper, clearance, load, or similar auxiliary lights. 62 A.L.R.3d 844.

Federal regulation of tractor-trailer configuration under the Surface Transportation Assistance Act of 1982 (49 USCS Appendix §§ 2301 et seq). 77 A.L.R. Fed. 350.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 210.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 747-749.

CJS.

60 C.J.S., Motor Vehicles § 49, 50.

§ 63-5-23. Front projecting loads on vehicles.

The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three (3) feet beyond the front wheels of such vehicle or the front bumper of such vehicle if it is equipped with such bumper, or as otherwise allowable by federal law.

HISTORY: Codes, 1942, § 8267; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 2; Laws, 1950, ch. 480; Laws, 1956, ch. 380; Laws, 1958, ch. 502; Laws, 1962, ch. 530; Laws, 1971, ch. 354, § 1, eff from and after passage (approved March 15, 1971); Laws, 2019, ch. 374, § 2, eff from and after July 1, 2019.

RESEARCH REFERENCES

ALR.

Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death or damage to private property. 21 A.L.R.3d 989.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 210.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 747 et seq

CJS.
60 C.J.S., Motor Vehicles §§ 49, 50.

§ 63-5-25. Connections for trailers and towed vehicles.

(1) Every trailer which shall be towed on the public highways at a speed in excess of twenty (20) miles per hour shall be coupled to the towing vehicle by means of a safety chain, chains, cables, or equivalent devices in addition to the regular trailer hitch or coupling. This requirement does not apply to a semitrailer having a connecting device composed of a fifth wheel and kingpin assembly meeting the requirements of the Interstate Commerce Commission, nor to a pole, pipe, casing, long or piling dolly. No more slack shall be left in any such safety chains, cables or equivalent devices than shall be necessary to permit proper turning. The safety chains, cables or equivalent device shall be so connected to the towed and towing vehicles and to the drawbar to prevent the drawbar from dropping to the ground if the drawbar fails, and shall be of sufficient strength to control the trailer in event of failure of the regular trailer hitch or coupling.

(2) When one (1) vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby. Said drawbar or other connection shall not exceed fifteen (15) feet from one (1) vehicle to the other except the connection between any two (2) vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

(3) When one (1) vehicle is towing another and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve (12) inches square.

(4) No more than three (3) vehicles in combination shall be towed by saddle-mounts, provided the overall length of the towing and towed vehicles shall not exceed seventy-five (75) feet in length. No more than one (1) motor vehicle shall be towed by tow bar.

HISTORY: Codes, 1942, §§ 8267, 8269; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 2; Laws, 1950, ch. 480; Laws, 1956, ch. 380; Laws, 1958, ch. 502; Laws, 1962, ch. 530; Laws, 1964, ch. 457; Laws, 1971, ch. 354, § 1; Laws, 1989, ch. 327, § 1; Laws, 1993, ch. 478, § 1, eff from and after passage (approved March 27, 1993).

Cross References — Sanitary regulation of mobile homes, house trailers, trailer and tourist camps, see § 41-25-13.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Safety chain requirement.

1. In general.

This statute being remedial in nature, should be liberally construed, and since it does not identify the protected class or group of persons, and has no exclusions, and does not exclude one riding in a trailer, it can be assumed that it is a safety measure enacted for the benefit and protection of pedestrians, bystanders, motorists, and other individuals who reasonably might be expected to be affected by a violation of the statute, and that the plaintiff in a personal injury suit who was injured while riding in the trailer, was one of the class of persons which the statute was intended to protect. U-Haul Co. v. White, 232 So. 2d 705, 1970 Miss. LEXIS 1635 (Miss. 1970).

2. Safety chain requirement.

Given Legislative intent under this section to protect public from damage and injury resulting from runaway trailers which have separated from towing vehicle, provisions of statute requiring safety chain would be construed as applicable to trailer which was coupled with vehicle being towed in excess of 20 miles per hour even though vehicle and trailer were temporarily slowed to less than 20 miles per hour at which time trailer became uncoupled. Bullock v. Fairburn, 353 So. 2d 759, 1977 Miss. LEXIS 2018 (Miss. 1977).

RESEARCH REFERENCES

ALR.

Automobiles: liability for accident arising from escape of trailer. 43 A.L.R.3d 725.

Liability for damage to highway or bridge caused by size or weight of motor vehicle or load. 53 A.L.R.3d 1035.

Federal regulation of tractor-trailer configuration under the Surface Transportation Assistance Act of 1982 (49 USCS Appendix §§ 2301 et seq). 77 A.L.R. Fed. 350.

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 751, 932-938.

CJS.

60A C.J.S., Motor Vehicles §§ 789, 790.

§ 63-5-27. Wheel and axle loads.

(1) Subject to the maximum gross single axle or tandem axle weights hereinafter specified, the gross single or tandem axle weights shall not exceed five hundred fifty (550) pounds per inch of tire width. The gross weight on any single or tandem axle thus derived shall be subject to a tolerance not in excess of five hundred (500) pounds provided that the total allowable gross weight of the single or tandem axle shall not exceed the maximum limitations allowed hereinafter.

(2) The gross weight imposed on the highway by the wheels of any one (1) single axle of a vehicle shall not exceed twenty thousand (20,000) pounds exclusive of the tolerance provided in Section 63-5-33. A single axle shall be defined as an assembly of two (2) or more wheels whose centers are in one (1) transverse vertical plane or may be included between two (2) parallel transverse vertical planes forty (40) inches apart extending across the full width of the vehicle.

(3) The gross weight imposed on the highway by any tandem axle shall not exceed thirty-four thousand (34,000) pounds exclusive of the tolerance provided in Section 63-5-33. A tandem axle shall be defined as any two (2) or more consecutive axles whose centers are more than forty (40) inches but not more than ninety-six (96) inches apart. No one (1) axle of any such group of two (2) or more consecutive axles shall exceed the weight permitted for a single axle.

(4)(a) Vehicles designed and especially constructed to transport concrete products and which are not available for purchase in sizes and capacities to fully comply with the road and bridge weight laws of the State of Mississippi shall not be made to conform to the axle spacing requirements or axle or tire loadings of this section or to the total combined weights as set out in Section 63-5-33 in Table III, provided (i) that such vehicles shall be limited to a gross weight of sixty thousand (60,000) pounds; (ii) that such vehicles shall only be operated within fifty (50) miles of their home base; (iii) that any such vehicles shall be limited to a maximum load of the rated capacity of the vehicle; (iv) that all such vehicles shall have at least three (3) axles; and (v) that all vehicles with only three (3) axles shall have all wheels brake-equipped. Any two (2) or more axles close enough to be considered an axle group shall be suspended by an equalizing system and be spaced a minimum of four (4) feet apart in order to be eligible for the maximum load as provided in this subsection. It shall be a violation if vehicles to which this subsection applies travel upon any federal interstate highway or upon any roads or bridges designated and posted as incapable of carrying such loads by the Transportation Commission, a board of supervisors, or municipal governing authorities as provided in subsection (5) or (6) of this section.

(b) Vehicles designed and especially constructed to transport raw cotton from harvest to the cotton gin shall not be made to conform to the axle spacing or axle or tire loadings of this section. However, such vehicles (i) shall be limited to a gross weight of sixty thousand (60,000) pounds; (ii) may be operated only within a fifty-mile radius of their home base or their contractual customer; (iii) shall be limited to a maximum load of the rated capacity of that vehicle; (iv) shall have all wheels brake equipped; and (v) are prohibited from traveling upon any federal interstate highway or upon any roads or bridges designated and posted as incapable of carrying such loads by the Mississippi Department of Transportation, a board of supervisors or municipal governing authorities as provided in subsection (5) or (6) of this section.

(c) Vehicles designed and especially constructed to collect and transport solid waste and which are not available for purchase in sizes and capacities to fully comply with the road and bridge weight laws of the State of Mississippi, shall not be made to conform to the axle spacing or tire loadings of this section. However, such vehicles (i) shall be limited to a gross weight of sixty thousand (60,000) pounds; (ii) may be operated only within a fifty-mile radius of their home base or their contractual customer; (iii) shall be limited to a maximum load of the rated capacity of that vehicle; (iv) shall have all wheels brake-equipped; and (v) are prohibited from traveling upon any federal interstate highway or upon any roads or bridges designated and posted as incapable of carrying such loads by the Mississippi Department of Transportation, a board of supervisors or the governing authorities of a municipality as provided in subsection (5) or (6) of this section.

(d) The rear axle of trailer mounted knuckle boom log loaders shall be exempt from the tire loading limitation provided for in subsection (3) of this section; provided, however, that the gross weight imposed on the highway by such an axle shall not exceed forty-one thousand (41,000) pounds.

(5) The board of supervisors of any county or the governing authorities of any municipality, by appropriate resolution, may impose limitations more

restrictive than those permitted in this section upon the county highways of such county or the streets of such municipality.

(6) The Mississippi Department of Transportation, for cause, may post or limit any road or bridge to weights less than those permitted by this section.

HISTORY: Codes, 1942, § 8270; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 3; Laws, 1948, ch. 328, § 5; Laws, 1950, ch. 472; Laws, 1981, ch. 366, § 5; Laws, 1982, ch. 479, § 1; Laws, 1995, ch. 326, § 1; Laws, 2001, ch. 352, § 1, eff from and after passage (approved Mar. 11, 2001); brought forward without change, Laws, 2020, ch. 378, § 2, eff from and after July 1, 2020.

Cross References — Maximum allowable gross weights of vehicles and loads, see §§ 63-5-29, 63-5-31, 63-5-33.

Authority of county board of supervisors to declare unusual or uncommon load or weight to be conveyed on or over county roads, etc, see § 65-7-43.

OPINIONS OF THE ATTORNEY GENERAL

The statute grants the Transportation Commission the authority to enact police and protective regulations for the control of traffic on the state highways, which may include setting limits that would have the effect of limiting truck traffic on certain highways for public safety reasons; however, the Commission should, in the exercise of this power, establish procedures and criteria for determining the necessity of any such action, and apply those procedures consistently. Hall, Oct. 20, 2000, A.G. Op. #2000-0499.

A municipality may impose weight limits on streets and issue tickets for violations; however, such limitations may not effective solely upon vehicles associated with the oil industry – they must be uniformly applicable to all vehicles exceeding the determined weight limit. Thach, Apr. 23, 2001, A.G. Op. #01-0221.

There is no authority for the board of supervisors to ban or limit the type of trucks, i.e. gravel trucks, traveling over county roads without regard to size or weight. Sherard, Aug. 30, 2002, A.G. Op. #02-0501.

A municipality has authority to set weight limits of vehicles passing over municipal streets, and any driver operating a vehicle in contravention of any weight limit shall be liable for all damage which the highway or street may sustain as a result of that operation; further, municipal governing authorities may seek damages in a civil action. Richardson, May 16, 2003, A.G. Op. 03-0229.

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

Violation of regulation governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property. 21 A.L.R.3d 989.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 183, 208.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 747 et seq

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 63-5-29. Gross weight of vehicle and loads; Table I.

On all highways of the State of Mississippi except those referred to in Sections 63-5-31 and 63-5-33, and subject to the limitations imposed on wheel and axle loads by Section 63-5-27 and to the further limitations hereinafter specified, the total combined weight (vehicles plus load) on any group of axles shall not exceed the value given in the following table (Table I), corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot:

TABLE I

Distance in Feet Between the Extreme of Any Group of Axles	Maximum Load in Pounds Carried on any Group of Axles
4	28,650
5	29,650
6	30,640
7	31,630
8	32,610
9	33,580
10	34,550
11	35,510
12	36,470
13	37,420
14	38,360
15	39,300
16	40,280
17	41,160
18	42,080
19	42,990
20	43,900
21	44,800
22	45,700
23	46,590
24	47,470
25	48,350
26	49,220
27	50,090
28	50,950
29	51,800
30	52,650
31	53,490
32	54,330
33	55,160
34	55,650
35	56,800
36 and greater	57,650 maximum

Moreover, in addition to the per axle weight limitation specified by Section 63-5-27, the maximum load carried on a combination of vehicles shall be subject to the following additional limitations: The maximum load carried on any group of two (2) axles shall not exceed twenty-four thousand (24,000) pounds in instances where one or more of such axles is a driving axle (that is, an axle turned by the vehicle's engine power).

(2) An axle group shall consist of any two (2) or more consecutive axles of any vehicle or combination of vehicles.

(3) Provided, however, that, subject to the limitations imposed on:

(a) Wheel, axle loads, spacing and weight by Sections 63-5-27 and 63-5-33, and

(b) Weight limitations on highways and bridges by Section 65-1-45, Mississippi Code of 1972, any product produced on or distributed from a location on any highway within or without the State of Mississippi may be transported from such place of production or location of distribution by the nearest route toward its destination on such highway or highways to a point where such highway intersects a highway previously found or hereafter found by the commission to be suitable to carry the maximum load limits pursuant to Sections 63-5-33 and 63-5-35; and provided further, that any goods, materials, and equipment actually used in the supply of an activity of producing, manufacturing or distributing products on any such highway within the State of Mississippi may be transported on such highway to the site of such manufacture, production or distribution. However, any penalty assessed against a vehicle operating under the provisions of this paragraph (3)(b) shall be calculated according to the maximum weight which that particular vehicle is legally permitted to transport and not the maximum gross weight limit established for that highway.

Nothing herein contained shall be construed to permit movements of weights in excess of those provided for in this section (63-5-29) over a route or section thereof for the purpose of a shortcut between two (2) highways found by the commission to be suitable to carry the maximum load limits pursuant to Sections 63-5-33 and 63-5-35 or any other purpose not consistent with the aforementioned provisions.

Nothing in Sections 63-5-29, and 63-5-34, shall be construed to imply any general variation from the maximum weight limitations designated by the Mississippi Department of Transportation other than specified in Sections 63-5-29 and 63-5-34.

HISTORY: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex Sess ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex Sess ch. 33; Laws, 1974, ch. 574, § 1; Laws, 1994, ch. 427, § 1; Laws, 2001, ch. 596, § 56, eff from and after July 1, 2001; brought forward without change, Laws, 2020, ch. 378, § 3, eff from and after July 1, 2020.

Cross References — Fee for emergency permit to haul weight in excess of that authorized by this section, see § 27-19-81.

Exceptions made for the purpose of calculating weight limits under this section, see § 63-5-34.

OPINIONS OF THE ATTORNEY GENERAL

A County Board of Supervisors has the authority to prohibit full 80,000 loads of logs produced on "such places of production" from being transported by the "nearest route" if such nearest route has a low weight limit imposed on it by the county. Barrett, Dec. 5, 1997, A.G. Op. #97-0723.

Concrete trucks must comply with the maximum gross weight of 57,650 pounds and the gross weight requirements based upon the axle spacing when traveling upon the highways designated by this section and otherwise known as low weight roads. Warren, August 13, 1999, A.G. Op. #99-0420.

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 183, 208.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 747 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

§ 63-5-31. Gross weight of vehicle and loads; Table II.

Subject to the limitations imposed on wheel and axle loads by Section 63-5-27, and to the further limitations hereinafter specified, the total combined weight (vehicles plus load) on any group of axles shall not exceed the value given in the following table (Table II) corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, on those highways or parts of highways found by the Mississippi Transportation Commission to be suitable to carry such increased load limits from an engineering standpoint, and so designated as such by order of said commission entered on its minutes and published once each week for three successive weeks in a daily newspaper of general circulation in this state:

TABLE II

Distance in Feet Between the Extreme of Any Group of Axles	Maximum Load in Pounds Carried on any Group of Axles
4	32,000
5	32,000
6	32,000
7	32,000
8	32,610
9	33,779
10	34,942
11	36,097
12	37,246

TABLE II

Distance in Feet Between the Extreme of Any Group of Axles	Maximum Load in Pounds Carried on any Group of Axles
13	38,387
14	39,522
15	40,649
16	41,770
17	42,883
18	43,990
19	45,089
20	46,182
21	47,267
22	48,346
23	49,417
24	50,482
25	51,539
26	52,590
27	53,633
28	54,670
29	55,699
30	56,722
31	57,737
32	58,746
33	59,747
34	60,742
35	61,729
36	62,710
37	63,683
38 and greater	64,650 maximum

Moreover, in addition to the per axle weight limitations specified by Section 63-5-27, the maximum load carried on a combination of vehicles shall be subject to the following additional limitations: The maximum load carried on any group of two (2) axles shall not exceed twenty-seven thousand (27,000) pounds in instances where one or more of such axles is a driving axle (that is, an axle turned by the vehicle's engine power).

An axle group shall consist of any two (2) or more consecutive axles of any vehicle or combination of vehicles.

HISTORY: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex Sess ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex Sess ch. 33; Laws, 2001, ch. 596, § 57, eff from and after July 1, 2001; brought forward without change, Laws, 2020, ch. 378, § 4, eff from and after July 1, 2020.

Cross References — Fee for emergency permit to haul weight in excess of that authorized by this section, see § 27-19-81.

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 183, 208.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 747.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

§ 63-5-33. Gross weight of vehicle and loads; Table III [Subsection (5) repealed effective July 1, 2025].

[Effective until July 1, 2023, this section will read as follows:]

(1) Subject to the limitations imposed on wheel and axle loads by Section 63-5-27, and to the further limitations hereinafter specified, the total combined weight (vehicles plus load) on any group of axles of a vehicle or a combination of vehicles shall not exceed the value given in the following table (Table III) corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, on those highways or parts of highways designated by the Mississippi Transportation Commission as being capable of carrying the maximum load limits and, in addition thereto, such other highways or parts of highways found by the commission to be suitable to carry the maximum load limits from an engineering standpoint, and so designated as such by order of the commission entered upon its minutes and published once each week for three (3) consecutive weeks in a daily newspaper published in this state and having a general circulation therein. The maximum total combined weight carried on any group of two (2) or more consecutive axles shall be determined by the formula contained in the Federal Weight Law enacted January 4, 1975, as follows: W=500 (LN/N-1+12N+36) where W=maximum weight in pounds carried on any group of two (2) or more axles computed to the nearest five hundred (500) pounds, L=distance in feet between the extremes of any group of two (2) or more consecutive axles, and N=number of axles in any group under consideration.

TABLE III

DISTANCE IN FEET BETWEEN THE EXTREMES OF ANY GROUP OF 2 OR MORE CONSECUTIVE

AXLES	MAXIMUM LOAD IN POUNDS CARRIED ON ANY GROUP OF 2 OR MORE CONSECUTIVE AXLES					
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles
4	34,000					
5	34,000					
6	34,000		Axle groups in			
7	34,000					
8 and less	34,000	34,000	these spacings			
More than						
8	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	impractical			
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,000	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,000	54,500	60,000		
20		51,000	55,500	60,500	66,000	
21		51,500	56,000	61,000	66,500	
22		52,500	56,500	61,500	67,000	
23		53,000	57,500	62,500	68,000	
24		54,000	58,000	63,000	68,500	74,000
25		54,500	58,500	63,500	69,000	74,500
26		55,500	59,500	64,000	69,500	75,000
27		56,000	60,000	65,000	70,000	75,500
28		57,000	60,500	65,500	71,000	76,500
29		57,500	61,500	66,000	71,500	77,000
30		58,500	62,000	66,500	72,000	77,500
31		59,000	62,500	67,500	72,500	78,000
32		60,000	63,500	68,000	73,000	78,500
33			64,000	68,500	74,000	79,000
34			64,500	69,000	74,500	80,000
35			65,500	70,000	75,000	80,000
36			66,000	70,500	75,500	80,000
37			66,500	71,000	76,000	80,000
38			67,500	71,500	77,000	80,000
39			68,000	72,500	77,500	80,000
40			68,500	73,000	78,000	80,000

41	69,500	73,500	78,500	80,000
42	70,000	74,000	79,000	80,000
43	70,500	75,000	80,000	80,000
44	71,500	75,500	80,000	80,000
45	72,000	76,000	80,000	80,000
46	72,500	76,500	80,000	80,000
47	73,500	77,500	80,000	80,000
48	74,000	78,000	80,000	80,000
49	74,500	78,500	80,000	80,000
50	75,500	79,000	80,000	80,000
51	76,000	80,000	80,000	80,000
52	76,500	80,000	80,000	80,000
53	77,500	80,000	80,000	80,000
54	78,000	80,000	80,000	80,000
55	78,500	80,000	80,000	80,000
56	79,500	80,000	80,000	80,000
57	80,000	80,000	80,000	80,000

(2) Moreover, in addition to the per axle weight limitations specified by Section 63-5-27, two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing that the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more, except that, until September 1, 1989, the axle distance for tank trailers, dump trailers and ocean transport container haulers may be thirty (30) feet or more. Such overall gross weight may not exceed eighty thousand (80,000) pounds, except as provided by this section.

(3) Notwithstanding the provisions of Section 63-5-27 and/or Section 63-5-29 to the contrary, vehicles hauling products in the manner set forth in this subsection, whether or not such vehicles are operating with a harvest permit, shall be allowed a gross weight of not to exceed forty thousand (40,000) pounds on any tandem. Vehicles operating without a harvest permit shall be allowed a tolerance not to exceed five percent (5%) above their authorized gross vehicle weight, tandem or axle weight; except that the maximum gross vehicle weight of any such vehicle shall not exceed eighty thousand (80,000) pounds plus a tolerance thereon of not more than two percent (2%). Vehicles operating without a harvest permit loading at a point of origin having scales available for weighing the vehicle shall not be eligible for any tolerance over the gross weight limit of eighty thousand (80,000) pounds. Vehicles operating with a harvest permit shall be allowed a tolerance not to exceed ten percent (10%) above their authorized tandem or axle weight, but the maximum gross vehicle weight of any such vehicle shall not exceed eighty-four thousand (84,000) pounds. However, neither the increased weights in this subsection nor any tolerance shall be allowed on federal interstate highways or on other highways where a tolerance is specifically prohibited by the Transportation Commission, the county board of supervisors or the municipal governing authorities as provided for in Section 63-5-27. The tolerance allowed by this subsection shall only apply to the operation of vehicles from the point of loading to the point of

unloading for processing, and to the operation of vehicles hauling sand, gravel, woodchips, wood shavings, sawdust, fill dirt, and agricultural products, and products for recycling or materials for the construction or repair of highways. The range of such operation shall not exceed a radius of one hundred (100) miles except where the products are being transported for processing within this state.

(4) Notwithstanding the provisions of Section 63-5-27 and/or Section 63-5-29 to the contrary, vehicles hauling prepackaged products, unloaded at a state port or to be loaded at a state port, which are containerized in such a manner as to make subdivision thereof impractical shall be allowed a gross weight of not to exceed forty thousand (40,000) pounds on any tandem, and a tolerance not to exceed ten percent (10%) above their authorized gross weight, tandem or axle weight; except that the maximum weight of any vehicle shall not exceed eighty thousand (80,000) pounds plus a tolerance thereon of not more than two percent (2%); however, neither the increased weights in this subsection nor any tolerance shall be allowed on federal interstate highways or on other highways where a tolerance is specifically prohibited by the Transportation Commission, the county board of supervisors or the municipal governing authorities as provided for in Section 63-5-27.

(5)(a) Vehicles for which a harvest permit has been issued pursuant to Section 27-19-81(4) shall be allowed a gross vehicle weight not to exceed eighty-four thousand (84,000) pounds. However, the board of supervisors of any county and the governing authorities of any municipality may designate the roads, streets and highways under their respective jurisdiction on and along which vehicles for which a harvest permit has been issued may travel. This subsection shall not apply to the federal interstate system.

(b) Any owner or operator who has been issued a harvest permit and who wishes to operate a vehicle on the roads, streets or highways under the jurisdiction of a county or municipality at a gross vehicle weight greater than the weight allowed by law or greater than the maximum weight established for such roads, streets or highways by the board of supervisors or municipal governing authorities, shall notify, in writing, the board of supervisors or the governing authorities, as the case may be, before operating such vehicle on the roads, streets or highways of such county or municipality. In his notice, the permit holder shall identify the routes over which he intends to operate vehicles for which the permit has been issued and the dates or time period during which he will be operating such vehicles. The board of supervisors or the governing authorities, as the case may be, shall have two (2) working days to respond in writing to the permit holder to notify the permit holder of the routes on and along which the permit holder may operate vehicles for which a harvest permit has been issued. Failure of the board of supervisors or the governing authorities timely to notify the permit holder and to designate the routes on and along which the permit holder may operate shall be considered as authorizing the permit holder to operate on any of the roads, streets or highways of the county or municipality in accordance with the authority granted to the permit holder by the harvest permit.

(c) Any time a timber deed is filed with the chancery clerk, the grantee, at that time, may make a written request of the board of supervisors of the county or the governing authorities of the municipality, as the case may be, for the purpose of providing to the grantee, within three (3) working days of the filing of the request, a designated and approved route over the roads, streets or highways under the jurisdiction of the county or city, as the case may be, that the grantee may travel for the purpose of transporting harvested timber. Upon providing such route designation, the county or city, as the case may be, shall also provide to the grantee a map designating the approved route. An approved route designation provided to a grantee under the provisions of this paragraph shall be valid for a period of six (6) months from its date of issue. The permit authorized to be issued under paragraph (b) of this subsection shall not be required for any person who obtains a permit issued under this paragraph.

(d) This subsection (5) shall stand repealed from and after July 1, 2025.

(6) Nothing in this section or subsections (1) through (4) of Section 63-5-27 shall be construed to deny the operation of any vehicle or combination of vehicles that could be lawfully operated upon the interstate highway system of this state on January 4, 1975.

(7)(a) Notwithstanding any provisions of Section 63-5-27 to the contrary, a vehicle that is operated by an engine fueled primarily by compressed or liquefied natural gas may exceed the gross vehicle weight limits by an amount, not to exceed a maximum of two thousand (2,000) pounds, that is equal to the difference between the weight of the vehicle attributable to the natural gas tank and fueling system carried by the vehicle and the weight of a comparable diesel tank and fueling system.

(b) The weight exception provided in this subsection shall apply to all interstate highways per the exemption expressly permitted by 23 USC Section 127.

[Effective from and after July 1, 2023, this section will read as follows:]

(1) Subject to the limitations imposed on wheel and axle loads by Section 63-5-27, and to the further limitations hereinafter specified, the total combined weight (vehicles plus load) on any group of axles of a vehicle or a combination of vehicles shall not exceed the value given in the following table (Table III) corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, on those highways or parts of highways designated by the Mississippi Transportation Commission as being capable of carrying the maximum load limits and, in addition thereto, such other highways or parts of highways found by the commission to be suitable to carry the maximum load limits from an engineering standpoint, and so designated as such by order of the commission entered upon its minutes and published once each week for three (3) consecutive weeks in a daily newspaper published in this state and having a general circulation therein. The maximum total combined weight carried on any group of two (2) or more consecutive axles shall be determined by the formula contained in the Federal Weight Law

enacted January 4, 1975, as follows: W=500 (LN/N-1+12N+36) where W=maximum weight in pounds carried on any group of two (2) or more axles computed to the nearest five hundred (500) pounds, L=distance in feet between the extremes of any group of two (2) or more consecutive axles, and N=number of axles in any group under consideration.

TABLE III

DISTANCE IN FEET BETWEEN THE EXTREMES OF ANY GROUP OF 2 OR MORE CONSECUTIVE AXLES	MAXIMUM LOAD IN POUNDS CARRIED ON ANY GROUP OF 2 OR MORE CONSECUTIVE AXLES					
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles
4	34,000					
5	34,000					
6	34,000		Axle groups in			
7	34,000					
8 and less	34,000	34,000	these spacings			
More than 8	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	impractical			
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,000	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,000	54,500	60,000		
20		51,000	55,500	60,500	66,000	
21		51,500	56,000	61,000	66,500	
22		52,500	56,500	61,500	67,000	
23		53,000	57,500	62,500	68,000	

24	54,000	58,000	63,000	68,500	74,000
25	54,500	58,500	63,500	69,000	74,500
26	55,500	59,500	64,000	69,500	75,000
27	56,000	60,000	65,000	70,000	75,500
28	57,000	60,500	65,500	71,000	76,500
29	57,500	61,500	66,000	71,500	77,000
30	58,500	62,000	66,500	72,000	77,500
31	59,000	62,500	67,500	72,500	78,000
32	60,000	63,500	68,000	73,000	78,500
33		64,000	68,500	74,000	79,000
34		64,500	69,000	74,500	80,000
35		65,500	70,000	75,000	80,000
36		66,000	70,500	75,500	80,000
37		66,500	71,000	76,000	80,000
38		67,500	71,500	77,000	80,000
39		68,000	72,500	77,500	80,000
40		68,500	73,000	78,000	80,000
41		69,500	73,500	78,500	80,000
42		70,000	74,000	79,000	80,000
43		70,500	75,000	80,000	80,000
44		71,500	75,500	80,000	80,000
45		72,000	76,000	80,000	80,000
46		72,500	76,500	80,000	80,000
47		73,500	77,500	80,000	80,000
48		74,000	78,000	80,000	80,000
49		74,500	78,500	80,000	80,000
50		75,500	79,000	80,000	80,000
51		76,000	80,000	80,000	80,000
52		76,500	80,000	80,000	80,000
53		77,500	80,000	80,000	80,000
54		78,000	80,000	80,000	80,000
55		78,500	80,000	80,000	80,000
56		79,500	80,000	80,000	80,000
57		80,000	80,000	80,000	80,000

(2) Moreover, in addition to the per axle weight limitations specified by Section 63-5-27, two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing that the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more, except that, until September 1, 1989, the axle distance for tank trailers, dump trailers and ocean transport container haulers may be thirty (30) feet or more. Such overall gross weight may not exceed eighty thousand (80,000) pounds, except as provided by this section.

(3) Notwithstanding the provisions of Section 63-5-27 and/or Section 63-5-29 to the contrary, vehicles hauling products in the manner set forth in this subsection, whether or not such vehicles are operating with a harvest permit, shall be allowed a gross weight of not to exceed forty thousand (40,000)

pounds on any tandem. Vehicles operating without a harvest permit shall be allowed a tolerance not to exceed five percent (5%) above their authorized gross vehicle weight, tandem or axle weight; except that the maximum gross vehicle weight of any such vehicle shall not exceed eighty thousand (80,000) pounds plus a tolerance thereon of not more than two percent (2%). Vehicles operating without a harvest permit loading at a point of origin having scales available for weighing the vehicle shall not be eligible for any tolerance over the gross weight limit of eighty thousand (80,000) pounds. Vehicles operating with a harvest permit shall be allowed a tolerance not to exceed ten percent (10%) above their authorized gross vehicle weight, tandem or axle weight, but the maximum gross vehicle weight of any such vehicle shall not exceed eighty-eight thousand (88,000) pounds. However, neither the increased weights in this subsection nor any tolerance shall be allowed on federal interstate highways or on other highways where a tolerance is specifically prohibited by the Transportation Commission, the county board of supervisors or the municipal governing authorities as provided for in Section 63-5-27. The tolerance allowed by this subsection shall only apply to the operation of vehicles from the point of loading to the point of unloading for processing, and to the operation of vehicles hauling sand, gravel, woodchips, wood shavings, sawdust, fill dirt, and agricultural products, and products for recycling or materials for the construction or repair of highways. The range of such operation shall not exceed a radius of one hundred (100) miles except where the products are being transported for processing within this state.

(4) Notwithstanding the provisions of Section 63-5-27 and/or Section 63-5-29 to the contrary, vehicles hauling prepackaged products, unloaded at a state port or to be loaded at a state port, which are containerized in such a manner as to make subdivision thereof impractical shall be allowed a gross weight of not to exceed forty thousand (40,000) pounds on any tandem, and a tolerance not to exceed ten percent (10%) above their authorized gross weight, tandem or axle weight; except that the maximum weight of any vehicle shall not exceed eighty thousand (80,000) pounds plus a tolerance thereon of not more than two percent (2%); however, neither the increased weights in this subsection nor any tolerance shall be allowed on federal interstate highways or on other highways where a tolerance is specifically prohibited by the Transportation Commission, the county board of supervisors or the municipal governing authorities as provided for in Section 63-5-27.

(5)(a) Vehicles for which a harvest permit has been issued pursuant to Section 27-19-81(4) shall be allowed a gross vehicle weight tolerance of ten percent (10%), not to exceed eighty-eight thousand (88,000) pounds. However, the board of supervisors of any county and the governing authorities of any municipality may designate the roads, streets and highways under their respective jurisdiction on and along which vehicles for which a harvest permit has been issued may travel. This subsection shall not apply to the federal interstate system.

(b) Any owner or operator who has been issued a harvest permit and who wishes to operate a vehicle on the roads, streets or highways under the jurisdiction of a county or municipality at a gross vehicle weight greater than the weight allowed by law or greater than the maximum weight established for such roads, streets or highways by the board of supervisors or municipal governing authorities, shall notify, in writing, the board of supervisors or the governing authorities, as the case may be, before operating such vehicle on the roads, streets or highways of such county or municipality. In his notice, the permit holder shall identify the routes over which he intends to operate vehicles for which the permit has been issued and the dates or time period during which he will be operating such vehicles. The board of supervisors or the governing authorities, as the case may be, shall have two (2) working days to respond in writing to the permit holder to notify the permit holder of the routes on and along which the permit holder may operate vehicles for which a harvest permit has been issued. Failure of the board of supervisors or the governing authorities timely to notify the permit holder and to designate the routes on and along which the permit holder may operate shall be considered as authorizing the permit holder to operate on any of the roads, streets or highways of the county or municipality in accordance with the authority granted to the permit holder by the harvest permit.

(c) Any time a timber deed is filed with the chancery clerk, the grantee, at that time, may make a written request of the board of supervisors of the county or the governing authorities of the municipality, as the case may be, for the purpose of providing to the grantee, within three (3) working days of the filing of the request, a designated and approved route over the roads, streets or highways under the jurisdiction of the county or city, as the case may be, that the grantee may travel for the purpose of transporting harvested timber. Upon providing such route designation, the county or city, as the case may be, shall also provide to the grantee a map designating the approved route. An approved route designation provided to a grantee under the provisions of this paragraph shall be valid for a period of six (6) months from its date of issue. The permit authorized to be issued under paragraph (b) of this subsection shall not be required for any person who obtains a permit issued under this paragraph.

(d) This subsection (5) shall stand repealed from and after July 1, 2025.

(6) Nothing in this section or subsections (1) through (4) of Section 63-5-27 shall be construed to deny the operation of any vehicle or combination of vehicles that could be lawfully operated upon the interstate highway system of this state on January 4, 1975.

(7)(a) Notwithstanding any provisions of Section 63-5-27 to the contrary, a vehicle that is operated by an engine fueled primarily by compressed or liquefied natural gas may exceed the gross vehicle weight limits by an amount, not to exceed a maximum of two thousand (2,000) pounds, that is equal to the difference between the weight of the vehicle attributable to the natural gas tank and fueling system carried by the vehicle and the weight of a comparable diesel tank and fueling system.

(b) The weight exception provided in this subsection shall apply to all interstate highways per the exemption expressly permitted by 23 USC Section 127.

HISTORY: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex Sess ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex Sess ch. 33; Laws, 1981, ch. 366, § 6; Laws, 1981, ch. 532, § 1; Laws, 1982, ch. 479, § 2; Laws, 1984, ch. 364; Laws, 1989, ch. 385, § 1; Laws, 1993, ch. 478, § 2; Laws, 1994, ch. 501, § 3; Laws, 1996, ch. 408, § 2; Laws, 1997, ch. 548, § 2; Laws, 1998, ch. 592, § 2; Laws, 2000, ch. 589, § 2; Laws, 2002, ch. 386, § 2; Laws, 2009, ch. 554, § 2; Laws, 2013, ch. 485, § 2; Laws, 2016, ch. 343, § 2, eff from and after July 1, 2016; Laws, 2018, ch. 425, § 1, eff from and after July 1, 2018; Laws, 2020, ch. 378, § 1, eff from and after July 1, 2020; Laws, 2021, ch. 478, § 21, eff from and after July 1, 2023; Laws, 2022, ch. 305, § 1, eff from and after July 1, 2022.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (5)(c) by substituting "paragraph (b) of this subsection" for "paragraph (b) of this section." The Joint Legislative Committee ratified the correction at its July 22, 2010 meeting.

Editor's Notes — Laws of 2021, ch. 478, § 26, provides:

"SECTION 26. Section 21 of this act shall take effect and be in force from and after July 1, 2023, and the remaining sections of this act shall take effect and be in force from and after July 1, 2021."

Amendment Notes — The 2021 amendment, effective July 1, 2023, in the fourth sentence of (3), inserted "gross vehicle weight" and substituted "eighty-eight thousand (88,000) pounds" for "eighty-four thousand (84,000) pounds"; and in the first sentence of (5)(a), inserted "tolerance of ten percent (10%)," and substituted "eighty-eight thousand (88,000) pounds" for "eighty-four thousand (84,000) pounds."

The 2022 amendment, in both versions of the section, substituted "July 1, 2025" for "July 1, 2022" in (5)(d).

Cross References — Fee for emergency permit to haul weight in excess of that authorized by this section, see § 27-19-81.

Exceptions made for the purpose of calculating weight limits under this section, see § 63-5-34.

JUDICIAL DECISIONS

1. In general.

Amended statutes allowing operators of vehicles hauling sand and gravel to apply for harvest permit to be issued by Transportation Commission, for purpose of authorizing such vehicles to operate on nonfederal highways within state at maximum weight of 84,000 pounds, were unconstitutional in that they removed discretion over maximum vehicle weight limits on county roads from county boards of supervisors and vested this authority in Department of Transportation. State v. Mississippi Ass'n of Supervisors, 699 So. 2d 1221, 1997 Miss. LEXIS 448 (Miss. 1997).

OPINIONS OF THE ATTORNEY GENERAL

A Supreme Court decision invalidated only those portions of the harvest permit statutes that allow the holder of such a permit to travel county roads without regard to county-set weight limits; the remaining portions of the statute, including the requirement to collect and distribute fees to the counties, continue in effect and should be carried out by the Department of Transportation. Warren, May 12, 2000, A.G. Op. #2000-0230.

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 183, 208.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 747.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

§ 63-5-34. Gross weight of vehicle and loads; exceptions.

For the purposes of Sections 63-5-29 and 63-5-33, any motor vehicle measuring more than twenty-nine (29) feet between the extreme axles with title to such vehicle registered with the State Tax Commission in accordance with the provisions of Section 1 et seq. may use public highways, excluding the federal interstate highway system, and be considered as a motor vehicle with a distance between the extreme of any group of axles twelve (12) feet longer than the extreme measurement of any such group.

Any motor vehicle that measures more than twenty-nine (29) feet and less than or equal to forty (40) feet between the extreme axles whose gross weight does not exceed seventy-two thousand (72,000) pounds on four (4) axles or seventy-three thousand two hundred eighty (73,280) pounds on five (5) axles, with title to such vehicle registered with the State Tax Commission on or before April 24, 1974, and in accordance with the provisions of Section 1 et seq., may use the federal interstate highway system and be considered as a motor vehicle with a distance between the extreme of any group of axles twelve (12) feet longer than the extreme measurement of any such group.

The provisions of this section may be superseded by action of the Mississippi Transportation Commission, by resolution spread upon its minutes, for any specified segment of a state highway or bridge in accordance with the provisions set forth in Section 65-1-45, when, due to any special weather or other hazard, such highways or bridges have been weakened or when such highways have substandard surfacing or weak bridges due to any cause.

This section shall not apply to situations in which its application would create a conflict with any length regulation or weight restriction imposed by federal law on the federal interstate highway system.

HISTORY: Laws, 1974, ch. 574, § 2; Laws, 1976, ch. 455; Laws, 1978, ch. 486, § 1; reenacted and amended, Laws, 1980, ch. 353; Laws, 1983, ch. 463; Laws, 1993, ch. 478, § 3, eff from and after passage (approved March 27, 1993).

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

OPINIONS OF THE ATTORNEY GENERAL

The statute does not grant the Transportation Commission the authority to limit weights of vehicles traveling state highways solely for public safety reasons. Hall, Oct. 20, 2000, A.G. Op. #2000-0499.

§ 63-5-35. Factors to be considered by Mississippi Transportation Commission before increasing load limits.

(1) It is the expressed intent of the Legislature that the Mississippi Transportation Commission shall take into consideration economic factors involving agriculture and industry within the State of Mississippi and shall allow such increased load limits pursuant to Section 63-5-33 for agricultural and industrial well-being where such is shown to be practical or necessary.

(2) The Mississippi Transportation Commission shall designate Mississippi Highway 32 from its intersection with U.S. Highway 49 at Webb, Tallahatchie County, eastward to Charleston as eligible to carry the load limits scheduled in Section 63-5-33, Mississippi Code of 1972.

(3) The Mississippi Transportation Commission shall designate Mississippi Highway 492 beginning at its intersection with Mississippi Highway 21 and extending easterly to its intersection with Mississippi Highway 15 as eligible to carry the load limits scheduled in Section 63-5-33.

HISTORY: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex Sess ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex Sess ch. 33; Laws, 1977, ch. 367; Laws, 2001, ch. 596, § 58; Laws, 2003, ch. 467, § 1, eff from and after passage (approved Mar. 23, 2003).

§ 63-5-37. Axles suspended by equalizing system.

Any two or more axles close enough to be considered an axle group shall be suspended by an equalizing system in order to be eligible for the maximum load limits provided in Sections 63-5-29 through 63-5-33.

HISTORY: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex. Sess. ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex. Sess. ch. 33, eff from and after passage (approved July 15, 1964).

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

§ 63-5-39. Inspection of certain vehicles upon registration; special permit; operation of vehicle or combination of vehicles in excess of gross weight limits.

(1) The State Tax Commission and county tax collectors, upon registering

any vehicle under the laws of this state, when the vehicle is designed and used primarily for the transportation of property or for the transportation of ten (10) or more persons, may require such information and may make such investigations and tests as may be necessary to enable them to determine whether such vehicle may safely be operated upon the highways in compliance with the provisions of this chapter. No vehicle shall be registered for a permissible gross weight in excess of the limitations set forth in this chapter unless a special permit is obtained as provided in Section 63-5-51, nor shall any temporary, trip, or other permit be issued for such vehicle for a gross weight in excess of the limitations set forth in this chapter unless such special permit is obtained. Every vehicle registered shall meet the following requirements:

(a) It shall be equipped with brakes, as required in Sections 63-7-51 and 63-7-53.

(b) Every motor vehicle to be operated outside of business and residence districts shall have motive power adequate to propel, at a reasonable speed, such vehicles and any load thereon or to be drawn thereby.

(2) The State Tax Commission and the county tax collectors shall insert in the registration card issued for every such vehicle the gross weight for which it is registered, and, if it is a motor vehicle to be used for propelling other vehicles, they shall separately insert the total permissible gross weight of such vehicle and other vehicles to be propelled by it. The registration card issued for every such vehicle shall be carried in such vehicle at all times. They may also issue a special plate with such gross weight or weights stated thereon, which shall be attached to the vehicle and displayed thereon at all times. It shall be unlawful for any person to operate any vehicle or combination of vehicles of a gross weight in excess of that for which registered by the State Tax Commission or the county tax collector, or in excess of the limitations set forth in this chapter.

HISTORY: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex Sess ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex Sess ch. 33; Laws, 2001, ch. 596, § 59, eff from and after July 1, 2001.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

§ 63-5-41. "Gross weight" and "gross load" defined.

"Gross weight" or "gross load," as used in this chapter and elsewhere in this title, shall mean the actual weight of a vehicle, including all fixtures and equipment, plus any load being transported thereon.

HISTORY: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex. Sess. ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex. Sess. ch. 33, eff from and after passage (approved July 15, 1964).

§ 63-5-43. Enforcement of Sections 63-5-29 through 63-5-41.

The Mississippi Department of Transportation shall designate its agents to enforce Sections 63-5-29 through 63-5-41, Mississippi Code of 1972, and, upon the failure of any person so designated to enforce such sections, any executive order or directive to the contrary notwithstanding, he or they shall be guilty of a misdemeanor and be fined not less than One Hundred Dollars ($100.00) nor more than Three Hundred Dollars ($300.00) for each such conviction.

HISTORY: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex. Sess. ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex. Sess. ch. 33; Laws, 1992, ch. 496, § 20, eff from and after July 1, 1992.

Cross References — Personnel charged with enforcement of weight and tax laws pursuant to this section required to complete course of instruction, see § 65-1-44.

OPINIONS OF THE ATTORNEY GENERAL

For the purposes of Section 45-2-1, weight enforcement officers employed by the Mississippi Department of Transportation are "law enforcement officers" and their beneficiaries would be eligible to receive the death benefits provided for by that statute. Brown, Jan. 17, 2003, A.G. Op. #03-0009.

§ 63-5-45. Transportation of perishable commodities of foreign import discharged at Mississippi ports.

The transportation by truck of perishable commodities of foreign import discharged at any port in the State of Mississippi shall not exceed sixty-four thousand, six hundred fifty (64,650) pounds load weight on vehicles having wheel base dimensions of not less than forty-five (45) feet, nor more than the maximum allowed by law for any weight. However, such weight and requirements with respect thereto shall never exceed federal limitations for the procurement of federal aid for either maintenance or construction of highways. For vehicles covered by this section, the Mississippi Department of Transportation may prescribe by regulation, from time to time, the number of wheels, axles, size and pressure of tires, and speed, and other related requirements when necessary to such vehicles, which it shall find and determine to be most desirable for the protection and safety of the public highways, considering the size and nature of such vehicles, all in accordance with federal requirements. Transportation permitted under this section shall be limited to the use of U.S. Highway 90 West from the City of Gulfport, Harrison County, Mississippi.

HISTORY: Codes, 1942, § 8271.5; Laws, 1958, ch. 485; Laws, 2001, ch. 596, § 60, eff from and after July 1, 2001.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

§ 63-5-47. Transportation of commodities to or from terminal or port facilities on Mississippi River.

Motor vehicles engaged in transporting commodities to or from terminal or port facilities on the Mississippi River may be operated with a total weight and/or size in excess of limitations which may be specified by law, although such size or weight limitations shall never exceed federal limitations for the procurement of federal aid for either maintenance or construction, or the limitations then in force in any state immediately adjacent to the county in which such port or terminal facilities are located, provided that:

(a) Said movement is wholly within a county which has therein a bridge across the Mississippi River.

(b) The operation of such vehicle or vehicles with such gross weight shall first be approved by the Mississippi Department of Transportation, and a permit issued by said department specifying the roads, highways or streets within such county over which such vehicle or vehicles may be operated.

(c) Said commodities have been received at such terminal or port facilities by water transportation and are destined for delivery across the bridge or said commodities have been received by movement across the bridge and are to be shipped from such terminal by water.

The operator of each and every motor vehicle operating under the provisions of this section shall, at all times, carry the permit issued by the said Mississippi Department of Transportation, or a certified copy thereof.

HISTORY: Codes, 1942, § 8272.5; Laws, 1960, ch. 341; Laws, 2001, ch. 596, § 61, eff from and after July 1, 2001.

Cross References — Special tax on carriers of property for each motor vehicle, truck tractor, or road tractor operated pursuant to this section, see § 27-19-15.

§ 63-5-49. Inspection and weighing of vehicles; assessment of penalty against owner or operator of overweight vehicle; removal of load in excess of legal limit; failure to stop and submit vehicle to inspection or weighing; escort of superload vehicle.

(1) Any police officer, law enforcement officer of the Department of Public Safety or authorized enforcement officer of the Mississippi Department of

Transportation may require the driver of any vehicle that is required by law or by any rule or regulation of the Mississippi Department of Transportation or the Department of Revenue to stop at inspection stations and submit to an inspection to stop and submit to a weighing of the vehicle, either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scales for weighing. To aid the enforcement of this chapter, the Transportation Department may assign up to forty (40) portable scale teams as it deems necessary for efficient enforcement.

(2) Whenever such an officer, upon weighing a vehicle and load as above provided, determines that the weight is unlawful, such officer shall assess a penalty against the owner or operator in accordance with Section 27-19-89, and may require the driver to drive the vehicle to a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under this chapter. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

(3) Any police officer, law enforcement officer of the Department of Public Safety, or authorized enforcement officer of the Transportation Department who stops a vehicle pursuant to subsection (1) of this section shall have the authority to inspect such vehicle to determine whether or not such vehicle is engaged in the illegal transportation of any contraband.

(4) Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refuses, when directed by such an officer upon weighing of the vehicle, to stop the vehicle and otherwise comply with the provisions of this section, shall be guilty of a misdemeanor, punishable by a fine of not more than One Thousand Dollars ($1,000.00), or by confinement in the county jail for not more than thirty (30) days, or by both such fine and jail sentence and, if operating at a gross weight in excess of the legal limit, such additional penalty or assessment as provided by law.

(5) It is the intent of the Legislature that the Department of Public Safety and all police officers shall cooperate with the Transportation Department in the enforcement of the highway weight laws of this state.

(6) Any police officer, law enforcement officer of the Department of Public Safety or authorized enforcement officer of the Mississippi Department of Transportation shall be authorized to escort any vehicle designated as a superload vehicle pursuant to the regulations of the Mississippi Department of Transportation. The escort shall be performed in a marked law enforcement vehicle with operating blue lights.

HISTORY: Codes, 1942, § 8272; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 5; Laws, 1950, ch. 482; Laws, 1981, ch. 366, § 9; Laws, 1992, ch. 496, § 21; Laws, 1994, ch. 382, § 2, eff from and after July 1, 1994; Laws, 2020, ch. 380, § 1, eff from and after July 1, 2020.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

For the purposes of Section 45-2-1, weight enforcement officers employed by the Mississippi Department of Transportation are "law enforcement officers" and their beneficiaries would be eligible to receive the death benefits provided for by that statute. Brown, Jan. 17, 2003, A.G. Op. #03-0009.

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

Authority of Public Official, Whose Duties or Functions Generally Do Not Entail Traffic Stops, To Effectuate Traffic Stop of Vehicle. 18 A.L.R.6th 519.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 219.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 63-5-51. Special permits for excess size and weight; special permits for commercial movement of recreational vehicles and motor homes that comply with vehicle width requirements.

(1)(a) The Mississippi Transportation Commission with respect to highways under its jurisdiction and local authorities with respect to highways under their jurisdiction may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter upon any highway under the jurisdiction of the party granting such permit and for the maintenance of which said party is responsible.

(b) The application for any such permit shall specifically describe the general operation and load to be moved, and the particular highways for which the permit to operate is requested, and whether such permit is requested for a single trip, or for continuous operation.

(c) The Mississippi Transportation Commission or local authority is authorized to issue or withhold such permit at its discretion. If such permit is issued, the Mississippi Transportation Commission or local authority is authorized to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces or structures. The Mississippi Transportation Commission or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(d) Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting such permit, and no person shall violate any of the terms or conditions of such special permit. However, permits covering the number of vehicles anticipated in any operation may be issued by the commission.

(2) The Mississippi Transportation Commission or local authorities, in their discretion, upon application in writing and good cause being shown therefor, issue a permit authorizing the commercial movement of one or more recreational vehicles or motor homes which comply with the provisions of Section 63-5-13. Such permits shall be valid for one (1) year from the date they are issued. A copy of the permit shall be carried with all such vehicles while they are being moved. The provisions of subsection (1) of this section shall not apply to the commercial movement of vehicles under a permit issued pursuant to this subsection if such vehicles comply with Section 63-5-13.

HISTORY: Codes, 1942, § 8273; Laws, 1938, ch. 200; Laws, 2000, ch. 318, § 4, eff from and after July 1, 2000.

Cross References — Prohibition against registration of vehicle and issuance of license tag where gross weight of the vehicle exceeds legal limits except where excess weight authorization is obtained from Mississippi Transportation Commission or local authority, see § 27-19-81.

Permit for excess length of load on vehicle transporting forest or agricultural products in natural state, see § 63-5-19.

Exceptions to maximum vehicle length, see § 63-5-21.

RESEARCH REFERENCES

ALR.

Power to limit weight of vehicle or its load with respect to use of streets or highways. 75 A.L.R.2d 376.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 214.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 63-5-52. Special permits for vehicles transporting heavy equipment with nondivisible loads having gross vehicle weight of 150,000 pounds or less; transference of permit from one pulling unit to another; forestry permits for vehicles having gross vehicle weight of 100,000 pounds or less and dimensions of 14 feet wide and 14 feet high or less.

(1) In addition to other permits authorized to be issued for overweight loads, the Department of Transportation is authorized to issue annual special

permits for vehicles transporting heavy equipment with a nondivisible load having a gross vehicle weight of one hundred fifty thousand (150,000) pounds or less. The permit shall be issued for the pulling unit. The department may establish rules and regulations for the issuance and transference of the permit from one pulling unit to another. The fee for such permit shall be Four Thousand Five Hundred Dollars ($4,500.00) and the permit shall expire one (1) year from the beginning movement date. Movements under such permit shall be made under such safety and equipment restrictions as the department may establish. The department shall specify the routes over which such movements may be conducted.

(2) In addition to other permits to be used for overweight and oversized loads, the Department of Transportation is authorized to issue annual special permits for the transporting of forestry-related equipment to vehicles having a gross vehicle weight of not more than one hundred thousand (100,000) pounds and dimensions of not more than fourteen (14) feet wide and fourteen (14) feet high. The permit, to be referred to as the "Forestry Permit," shall be issued for each vehicle that serves as a pulling unit, at a fee of Two Hundred Dollars ($200.00) per unit annually. The Forestry Permit shall be available for the hauling of equipment or machinery customary and necessary for timber-harvesting activities, including, but not limited to, bulldozers, knuckleboom loaders, cutters, skidders, track machines of the same kind, mulchers and other machines used for silvicultural activities. The Forestry Permit shall be available to those hauling the subject equipment to and from timber harvest operations, as well as those hauling the equipment to and from a truck repair shop or equipment service center.

HISTORY: Laws, 2003, ch. 538, § 1; Laws, 2006, ch. 312, § 1; Laws, 2008, ch. 337, § 1, eff from and after July 1, 2008; Laws, 2020, ch. 385, § 1, eff from and after July 1, 2020.

Cross References — Prohibition against registration of vehicle and issuance of license tag where gross weight of the vehicle exceeds legal limits except where excess weight authorization is obtained from Mississippi Transportation Commission or local authority, see § 27-19-81.

Penalty for failure to obtain permit, see § 27-19-89.

§ 63-5-53. Liability for damage to highway or structure caused by vehicle.

(1) Any person driving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving, or moving of such vehicle, object, or contrivance, or as a result of operation, driving, or moving any vehicle, object or contrivance weighing in excess of the maximum weight in this chapter but authorized by a special permit issued as provided in this chapter.

(2) Whenever such driver is not the owner of such vehicle, object or contrivance, but is so operating, driving, or moving the same with the express

or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage.

(3) Such damage may be recovered in a civil action brought by the authorities in control of such highway or highway structure.

HISTORY: Codes, 1942, § 8274; Laws, 1938, ch. 200.

OPINIONS OF THE ATTORNEY GENERAL

A municipality has authority to set weight limits of vehicles passing over municipal streets, and any driver operating a vehicle in contravention of any weight limit shall be liable for all damage which the highway or street may sustain as a result of that operation; further, municipal governing authorities may seek damages in a civil action. Richardson, May 16, 2003, A.G. Op. 03-0229.

RESEARCH REFERENCES

ALR.

Liability for damage to highway or bridge caused by size or weight of motor vehicle or load. 53 A.L.R.3d 1035.

Am. Jur.

40 Am. Jur. 2d, Highways, Streets, and Bridges §§ 670-672.

§ 63-5-55. Spilling loads on highways.

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

HISTORY: Codes, 1942, § 8268; Laws, 1938, ch. 200.

Cross References — Requirements for open top vehicles when carrying certain loads, see §§ 63-7-83 through 63-7-89.

CHAPTER 7.

EQUIPMENT AND IDENTIFICATION

General Provisions. 63-7-1
Tampering With or Alteration of Odometers. 63-7-201
Child Passenger Restraint Devices. 63-7-301

GENERAL PROVISIONS

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63-7-5. Definitions.
63-7-7. Operation of vehicle in violation of chapter.
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63-7-85. Use of sideboards on open top vehicles carrying sand, dirt, gravel or rock.
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63-7-91. Slow-moving vehicle safety emblem; requirement.
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63-7-95. Slow-moving vehicle safety emblem; rules and regulations.
63-7-97. Slow-moving vehicle safety emblem; relationship with other requirements as to lighting and safety equipment.
63-7-99. Slow-moving vehicle safety emblem; presumption as to use of reasonable care in operation of vehicle.
63-7-101. Slow-moving vehicle safety emblem; enforcement of provisions.
63-7-103. Trooper Steve Hood Act: The Nitrous Oxide Prohibition Act; use of nitrous oxide in motor vehicle or motorcycle driven on streets or highways prohibited; penalties.

§ 63-7-1. Short title.

This chapter may be cited as the Uniform Highway Traffic Regulation Law – Equipment and Identification Regulations.

HISTORY: Codes, 1942, § 8126; Laws, 1938, ch. 200.

Cross References — Uniform Highway Traffic Regulation Law – Rules of the Road, see §§ 63-3-1 et seq.

Uniform Highway Traffic Regulation Law – Size, Weight and Load Regulations, see §§ 63-5-1 et seq.

Uniform Highway Traffic Regulation Law – Traffic Violations Procedure, see §§ 63-9-1 et seq.

RESEARCH REFERENCES

ALR.

Driving motor vehicle without lights or with improper lights as affecting liability for collision. 21 A.L.R.2d 7.

Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares. 67 A.L.R.2d 12.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle. 61 A.L.R.3d 13.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without front lights, or with improper front lights. 62 A.L.R.3d 560.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without or with improper taillights or rear reflectors. 62 A.L.R.3d 771.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without, or with improper, clearance, load, or similar auxiliary lights. 62 A.L.R.3d 844.

Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights. 63 A.L.R.3d 824.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 189, 190 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 43-45.

Practice References.

Kenworthy, Killer Roads: From Crash to Verdict

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

§ 63-7-3. Construction.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: Codes, 1942, § 8282; Laws, 1938, ch. 200.

§ 63-7-5. Definitions.

For purposes of this chapter, the meanings ascribed to the words and phrases in Article 3 of Chapter 3, of this title shall be fully applicable to this chapter.

HISTORY: Codes, 1942, § 8126; Laws, 1938, ch. 200.

§ 63-7-7. Operation of vehicle in violation of chapter.

It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

HISTORY: Codes, 1942, § 8228; Laws, 1938, ch. 200.

Cross References — Application of this section to a violation of provisions restricting the tinting or darkening of motor vehicle windows, see § 63-7-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Probable cause to stop.

That defendant's car was emitting excessive exhaust was a violation of Miss. Code §§ 63-7-55 and 63-7-7, and gave a police officer probable cause to pull defendant's car over. Cagler v. State, 844 So. 2d 487, 2003 Miss. App. LEXIS 298 (Miss. Ct. App. 2003).

OPINIONS OF THE ATTORNEY GENERAL

Operator of an ATV or golf cart on the public roadway may be charged with operating a motor vehicle upon a public road without the proper safety equipment. Cook, Mar. 11, 2005, A.G. Op. 05-0033.

RESEARCH REFERENCES

ALR.

Comment Note.–Effect of violation of safety equipment statute as establishing negligence in automobile accident litigation. 38 A.L.R.3d 530.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 189, 190 et seq.

CJS.

61A C.J.S., Motor Vehicles §§ 1639, 1640.

§ 63-7-9. Applicability of chapter.

Except as may otherwise be provided in this chapter, the provisions of this chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors.

HISTORY: Codes, 1942, § 8228; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. In general.

Trial court erred by granting appellee driver summary judgment in appellant driver's negligence action for a highway accident on the ground that appellant's operation of the tractor was negligent per se because Miss. Code Ann. §§ 63-7-11, 63-7-13(3) (Rev. 2004) did not apply to the tractor, pursuant to Miss. Code Ann. § 63-7-9 (Rev. 2004), as it was employed for agricultural purposes. Jamison v. Barnes, 8 So. 3d 238, 2008 Miss. App. LEXIS 671 (Miss. Ct. App. 2008), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 210 (Miss. 2009).

In an action pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., where a slow-moving county motor grader executed a turn on the highway, even though the operator did not give a hand signal, the grader operator was not negligent in failing to do so or for failing to keep a proper lookout, but the injured driver was negligent in passing the grader within 100 feet of an intersection and by failing to keep a proper lookout. Barnett v. Lauderdale County Bd. of Supervisors, 880 So. 2d 1085, 2004 Miss. App. LEXIS 853 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

Am. Jur.
27 Am. Jur. Trials 679, Preparation for Trial of an Action Involving Injury From an Agricultural Harvesting Machine.

§ 63-7-11. Requirements as to use of lights.

Every vehicle upon a highway within this state during the period from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of five hundred feet ahead shall be equipped with lighted front and rear lamps as respectively required in Section 63-7-13 for different classes of vehicles and subject to exemption with reference to lights on parked vehicles as hereinafter stated in this chapter.

HISTORY: Codes, 1942, § 8229-01; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 9; Laws, 1956, ch. 381; Laws, 1968, ch. 543, § 1, eff from and after passage (approved May 15, 1968).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-10. [Reserved for future use.]
11. Under former law.

1. In general.

Trial court erred by granting appellee driver summary judgment in appellant driver's negligence action for a highway accident on the ground that appellant's operation of the tractor was negligent per se because Miss. Code Ann. §§ 63-7-11, 63-7-13(3) (Rev. 2004) did not apply to the tractor, pursuant to Miss. Code Ann. § 63-7-9 (Rev. 2004), as it was employed for agricultural purposes. Jamison v. Barnes, 8 So. 3d 238, 2008 Miss. App. LEXIS 671 (Miss. Ct. App. 2008), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 210 (Miss. 2009).

A motorist is responsible for what he might have seen within the range of his headlights. Layton v. Cook, 248 Miss. 690, 160 So. 2d 685, 1964 Miss. LEXIS 293 (Miss. 1964).

2.-10. [Reserved for future use.]

11. Under former law.

Recovery against railroad company could not be sustained for death of truck driver occurring at night when he drove his truck into an unlighted railroad car on a railroad crossing, where if decedent had been observing the requirements contained in former enactment of this section (Code of 1930, § 5575), and of the law that a driver of a motor vehicle should decrease its speed to avoid colliding with any person, vehicle, or other conveyance on or entering a highway when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions in approaching and crossing an intersection, the accident would not have occurred. Mississippi E. R. Co. v. Summers, 194 Miss. 179, 11 So. 2d 429, 1943 Miss. LEXIS 21 (Miss. 1943).

In automobile collision case, erroneous instruction authorizing verdict for plaintiff if defendant was violating statute regarding headlights at time of accident held not cured by other instructions that evidence must show that statutory violation was proximate cause of injury, since instructions were so radically conflicting as to mislead jury. Marx v. Berry, 176 Miss. 1, 168 So. 61, 1936 Miss. LEXIS 117 (Miss. 1936).

In action arising out of collision allegedly resulting from absence of headlights on defendant's truck, instruction that verdict should be for plaintiff if collision occurred more than one-half hour after sunset held reversible error, since violation of statute would not make out absolute case of liability. Marx v. Berry, 176 Miss. 1, 168 So. 61, 1936 Miss. LEXIS 117 (Miss. 1936).

One driving automobile at more than ten miles an hour at night without lights was prima facie negligent. McLaurin v. McLaurin Furniture Co., 166 Miss. 180, 146 So. 877, 1933 Miss. LEXIS 365 (Miss. 1933), overruled, Burns v. Burns, 518 So. 2d 1205, 1988 Miss. LEXIS 18 (Miss. 1988).

RESEARCH REFERENCES

ALR.

Driving motor vehicle without lights or with improper lights as affecting liability for collision. 21 A.L.R.2d 7.

Driving motor vehicle without lights or with improper lights as gross negligence or the like warranting recovery by guests under guest statute or similar common-law rule. 21 A.L.R.2d 209.

Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares. 67 A.L.R.2d 12.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle. 61 A.L.R.3d 13.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without front lights, or with improper front lights. 62 A.L.R.3d 560.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without or with improper taillights or rear reflectors. 62 A.L.R.3d 771.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without, or with improper, clearance, load, or similar auxiliary lights. 62 A.L.R.3d 844.

Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights. 63 A.L.R.3d 824.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 204.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 756-759.

3A Am. Jur. Pl & Pr Form (Rev), Automobiles and Highway Traffic, Form 809, 999, 1000, 1341-1524, 1531-2060.

22 Am. Jur. Proof of Facts 2d 173, Defective or Improperly Operated Headlights.

22 Am. Jur. Proof of Facts 2d 225, Defective or Improperly Operated Taillights.

CJS.

60 C.J.S., Motor Vehicles §§ 43-45.

60A C.J.S., Motor Vehicles §§ 629-633, 666, 710.

§ 63-7-13. Requirements as to lighting equipment.

(1) **Head lamps on motor vehicles.** Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two (2) head lamps with at least one (1) on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in Section 63-7-31.

(2) **Head lamps on motorcycles.** Every motorcycle shall be equipped with at least one (1) and not more than two (2) head lamps which shall comply with the requirements and limitations set forth in Section 63-7-31.

(3) **Rear lamps.** Every motor vehicle, trailer, semitrailer, pole trailer and any other vehicle which is being drawn in a train of vehicles shall be equipped with at least one (1) rear lamp mounted on the rear, which, when lighted, shall emit a red light plainly visible from a distance of five hundred

(500) feet to the rear. However, any antique automobile, as defined under Section 27-19-47, and any street rod, as defined under Section 27-19-56.6, may be equipped with one or more rear lamps that have been modified to emit a blue, violet or purple light resembling rear lamps appearing on some American automobiles originally manufactured in the 1940s and 1950s.

Either a rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly readable from a distance of fifty (50) feet to the rear. Any rear lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps, cowl lamps or fender lamps are lighted.

(4) **Lamps on bicycles.** Every bicycle shall be equipped with a lighted white lamp on the front thereof visible under normal atmospheric conditions from a distance of at least five hundred (500) feet in front of such bicycle and shall also be equipped with a reflex mirror reflector or lamp on the rear exhibiting a red light visible under like conditions from a distance of at least five hundred (500) feet to the rear of such bicycle.

(5) **Lights on other vehicles.** All vehicles not required in this chapter to be equipped with special lighted lamps shall carry one or more lights, lamps or lanterns displaying a white light, visible under normal atmospheric conditions from a distance of not less than five hundred (500) feet to the front of such vehicle and shall display a reflex reflector or red light visible under like conditions from a distance of not less than three hundred (300) feet to the rear of such vehicle.

HISTORY: Codes, 1942, § 8229-01; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 9; Laws, 1956, ch. 381; Laws, 1968, ch. 543, § 1; Laws, 2006, ch. 402, § 1, eff from and after July 1, 2006.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-10. [Reserved for future use.]
11. Under former law.

1. In general.

Trial court erred by granting appellee driver summary judgment in appellant driver's negligence action for a highway accident on the ground that appellant's operation of the tractor was negligent per se because Miss. Code Ann. §§ 63-7-11, 63-7-13(3) (Rev. 2004) did not apply to the tractor, pursuant to Miss. Code Ann. § 63-7-9 (Rev. 2004), as it was employed for agricultural purposes. Jamison v. Barnes, 8 So. 3d 238, 2008 Miss. App. LEXIS 671 (Miss. Ct. App. 2008), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 210 (Miss. 2009).

Dismissal of a petition for post-conviction relief was reversed and remanded for an evidentiary hearing because defendant made a prima facie showing that his attorney was deficient in recommending a plea to a weapons charge since there was no probable cause to stop a car where one taillight was working under Miss. Code Ann. § 63-7-13; however, there was no ineffective assistance of counsel shown based on a failure to explain an Alford plea or the failure to investigate. Moore v. State, 986 So. 2d 959, 2007 Miss. App. LEXIS 242 (Miss. Ct. App. 2007), rev'd, 986 So. 2d 928, 2008 Miss. LEXIS 326 (Miss. 2008).

Officer had probable cause to stop defendant's vehicle based on his observation of an improper turn and a missing headlight, notwithstanding the fact that the officer had received word from dispatch to be on the lookout for a vehicle matching that description. Scott v. City of Booneville, 962 So. 2d 698, 2007 Miss. App. LEXIS 185 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

Because defendant's truck violated Miss. Code Ann. § 63-7-13(3), and a traffic violation had occurred, stopping the truck was reasonable; because the investigatory stop was based on a reasonable suspicion; after the ephedrine was seen in plain view, the officers had probable cause to search the vehicle. Walker v. State, 881 So. 2d 820, 2004 Miss. LEXIS 1011 (Miss. 2004).

The question of whether a collision between an automobile and a bicyclist occurred because the bicycle was not provided with lamps as provided in subsection (4) of this section [Code 1942, § 8229-01] is one for the jury. Swan v. Campbell, 252 Miss. 254, 172 So. 2d 566, 1965 Miss. LEXIS 1096 (Miss. 1965).

2.-10. [Reserved for future use.]

11. Under former law.

Proof of the fact that an automobile was traveling with only one light in violation of former similar requirement (Code 1930, § 5575), established a prima facie case of negligence, which, however, might have been rebutted by evidence showing that the violation of the statute did not proximately cause or contribute to the injury and damage complained of in an action seeking recovery for the negligent fatal injury to a mule. Walker v. Dickerson, 183 Miss. 642, 184 So. 438, 1938 Miss. LEXIS 276 (Miss. 1938).

If negligence of motorist in failing to have his automobile equipped with rear red light contributes to rear end collision, he is liable for his proportion of damages sustained by motorist who ran into his automobile. Solomon v. Continental Baking Co., 172 Miss. 388, 160 So. 732, 1935 Miss. LEXIS 162 (Miss. 1935).

If truck which automobile ran into at night was not equipped with rear red light, such negligence was proximate cause of collision unless automobile driver was guilty of such negligence as superseded negligence of truck driver and became sole proximate cause of collision. Solomon v. Continental Baking Co., 172 Miss. 388, 160 So. 732, 1935 Miss. LEXIS 162 (Miss. 1935).

In action for damages sustained when plaintiff's automobile ran into rear of defendant's truck at night, whether truck was being driven without rear red light held by jury. Solomon v. Continental Baking Co., 172 Miss. 388, 160 So. 732, 1935 Miss. LEXIS 162 (Miss. 1935).

Whether truck in which plaintiff was riding when injured in collision had only one light, and this constituted negligence, held for jury. Harper v. Wilson, 163 Miss. 199, 140 So. 693, 1932 Miss. LEXIS 28 (Miss. 1932).

Whether absence of one headlight on truck on which plaintiff was riding was contributing cause to injuries sustained in collision held for jury. Harper v. Wilson, 163 Miss. 199, 140 So. 693, 1932 Miss. LEXIS 28 (Miss. 1932).

RESEARCH REFERENCES

ALR.

Driving motor vehicle without lights or with improper lights as affecting liability for collision. 21 A.L.R.2d 7.

Driving motor vehicle without lights or with improper lights as gross negligence or the like warranting recovery by guests under guest statute or similar common-law rule. 21 A.L.R.2d 209.

Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares. 67 A.L.R.2d 12.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle. 61 A.L.R.3d 13.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without front lights, or with improper front lights. 62 A.L.R.3d 560.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without or with improper taillights or rear reflectors. 62 A.L.R.3d 771.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without, or with improper, clearance, load, or similar auxiliary lights. 62 A.L.R.3d 844.

Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights. 63 A.L.R.3d 824.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle. 64 A.L.R.3d 551.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 203-226.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 756-759.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 999-1001, 1341-1524, 1531-2060.

16 Am. Jur. Proof of Facts 2d 447, Defective Bicycle Design.

22 Am. Jur. Proof of Facts 2d 173, Defective or Improperly Operated Headlights.

22 Am. Jur. Proof of Facts 2d 225, Defective or Improperly Operated Taillights.

11 Am. Jur. Proof of Facts 3d 395, Negligence of Motorist in Accident Involving Bicyclist.

11 Am. Jur. Proof of Facts 3d 503, Motor Vehicle Accident – Contributory Negligence by Bicyclist.

CJS.

60 C.J.S., Motor Vehicles §§ 43-45.

60A C.J.S., Motor Vehicles §§ 629-633, 666, 710.

§ 63-7-15. Additional lighting requirements for certain vehicles.

(1) **Every bus or truck.** On every bus or truck, whatever its size, there shall be at least the following lighting devices and reflectors: On the front, two head lamps, one at each side. On the rear, one red tail lamp; one red or amber stop light; two red reflectors, one at each side.

(2) **Every bus or truck eighty inches or more in width.** On every bus or truck eighty inches or more in overall width there shall be at least the following lighting devices and reflectors: On the front, two head lamps, one at each side; two amber clearance lamps, one at each side. On the rear, one red tail lamp; one red or amber stop light; two red clearance lamps, one at each side; two red reflectors, one at each side. On each side, one amber side-marked lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.

(3) **Every truck tractor.** On every truck tractor there shall be at least the following lighting devices and reflectors. On the front, two head lamps, one at each side; two amber clearance lamps, one at each side. On the rear, one red tail lamp; one red or amber stop light.

(4) **Every semi-trailer or trailer in excess of three thousand (3,000) pounds gross weight.** On every semi-trailer or full trailer having a gross weight in excess of three thousand (3,000) pounds, there shall be at least the following lighting devices and reflectors: On the front, two amber clearance lamps, one at each side. On the rear, one red tail lamp; one red or amber stop light; two red clearance lamps, one at each side; two red reflectors, one at each side. On each side, one amber side-marker lamp, located at or near the front;

one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.

(5) **Every semi-trailer or trailer weighing three thousand (3,000) pounds gross or less.** On every semi-trailer or full trailer having a gross weight of three thousand (3,000) pounds or less, there shall be at least the following lighting devices and reflectors: On the front, no requirement. On the rear, one red tail lamp; two red reflectors, one at each side; one red or amber stop light if the semi-trailer or full trailer obscures the stop light on the towing vehicle.

(6) **Every pole-trailer.** On every pole-trailer there shall be at least the following lighting devices and reflectors: On the front, no requirement. On the rear, one red tail lamp; two red reflectors, one at each side, placed to indicate extreme width of the pole-trailer or its load, whichever is wider. (A red lantern or flag on the end of a projecting load shall be required as provided in Section 63-7-47.) On each side, on the rearmost support for the load, one combination marker lamp showing amber to the front and red to the side and rear, mounted to indicate maximum width of the pole-trailer or load; one red reflector, located at or near the rear.

HISTORY: Codes, 1942, § 8229-02; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 10.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Parked vehicle.
3. Towed vehicle.

1. In general.

Failure of the owner and driver to equip a truck with clearance lights and side marker lights and reflectors as required by law is negligence, which, if found to be the contributing cause of a collision, with resulting injuries, will impose liability upon the owner and the driver. Arnold v. Reece, 229 Miss. 862, 92 So. 2d 237, 1957 Miss. LEXIS 335 (Miss. 1957).

2. Parked vehicle.

Parking of a tractor and trailers at least two feet on the paved portion of the road, although there was room to park them entirely off, on a dark, foggy night, without rear lights, reflectors, or flares, is a violation of this section [Code 1942, § 8229-02]. Jester v. Bailey, 239 Miss. 384, 123 So. 2d 442, 1960 Miss. LEXIS 296 (Miss. 1960).

3. Towed vehicle.

Absence of reflectors or other lighting devices on a trailer eight feet wide while being towed after dark by a truck 6 feet 4 inches wide, on a well-traveled country road from 21 to 23 feet in width, held negligence as to driver of vehicle proceeding in opposite direction. Dent v. Luckett, 242 Miss. 559, 135 So. 2d 840, 1961 Miss. LEXIS 593 (Miss. 1961).

RESEARCH REFERENCES

ALR.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle. 64 A.L.R.3d 551.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 203-205.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 756-759, 748.

CJS.
60 C.J.S., Motor Vehicles § 43-45.
60A C.J.S., Motor Vehicles §§ 629-633, 666, 710.

§ 63-7-17. Use of spot lamps, auxiliary driving lamps, and signal lamps.

(1) **Spot lamps.** Any motor vehicle or motorcycle may be equipped with not to exceed one (1) spot lamp. Every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed into the eyes of the approaching driver. Spot lamps may not emit other than either a white or amber light.

(2) **Auxiliary driving lamps.** Any motor vehicle may be equipped with not to exceed two (2) auxiliary driving lamps mounted on the front at a height not less than twelve (12) nor more than forty-two (42) inches above the level surface of which the vehicle stands. Every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in subsection (3) of this section.

(3) **Signal lamps.** Whenever a motor vehicle is equipped with a signal lamp to comply with the provisions of Section 63-3-709, the signal lamp shall be so constructed and located on the vehicle as to give a signal which shall be plainly visible in normal sunlight from a distance of one hundred (100) feet to the rear of the vehicle but shall not project a glaring or dazzling light.

HISTORY: Codes, 1942, § 8229-10; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 18; Laws, 1978, ch. 470, § 1, eff from and after July 1, 1978.

JUDICIAL DECISIONS

ANALYSIS

1.-10. [Reserved for future use.]
11. Under former law.

1.-10. [Reserved for future use.]

11. Under former law.

Absence of signaling device on automobile, if established, held not, under evidence, to have contributed to injuries of pedestrian who stepped suddenly in front of automobile. Murphy v. Willingham, 160 Miss. 94, 133 So. 213, 1931 Miss. LEXIS 148 (Miss. 1931).

RESEARCH REFERENCES

ALR.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle. 64 A.L.R.3d 551.

§ 63-7-19. Lights on police and emergency vehicles; lights on rural mail carrier vehicles; lights on sanitation vehicles; lights on military funeral procession escort vehicles; when lights authorized by this section must be used.

(1)(a) Except as otherwise provided for unmarked vehicles under Section

19-25-15 and Section 25-1-87, every police vehicle shall be marked with blue lights. Every ambulance and special use EMS vehicle as defined in Section 41-59-3 shall be marked with red lights front and back and also may be marked with white and amber lights in addition to red lights. Every emergency management/civil defense vehicle, including emergency response vehicles of the Department of Environmental Quality, shall be marked with blinking, rotating or oscillating red lights. Official vehicles of a 911 Emergency Communications District may be marked with red and white lights. Every wrecker or other vehicle used for emergency work, except vehicles authorized to use blue or red lights, shall be marked with blinking, oscillating or rotating amber-colored lights to warn other vehicles to yield the right-of-way, as provided in Section 63-3-809. Only police vehicles used for emergency work may be marked with blinking, oscillating or rotating blue lights to warn other vehicles to yield the right-of-way. Only law enforcement vehicles, fire vehicles, private or department-owned vehicles used by firemen of volunteer fire departments which receive funds pursuant to Section 83-1-39 when responding to calls, emergency management/civil defense vehicles, emergency response vehicles of the Department of Environmental Quality, ambulances used for emergency work, and 911 Emergency Communications District vehicles may be marked with blinking, oscillating or rotating red lights to warn other vehicles to yield the right-of-way. This section shall not apply to school buses carrying lighting devices in accordance with Section 63-7-23.

(b) Emergency response vehicles listed in this subsection (1) are also authorized to use alternating flashing headlights when responding to any emergency.

(2) Any vehicle operated by a United States rural mail carrier for the purpose of delivering United States mail may be marked with two (2) amber-colored lights on front top of the vehicle and two (2) red-colored lights on rear top of the vehicle and alternatively or additionally may be marked with a white, flashing strobe light on the roof of the vehicle so as to warn approaching travelers to decrease their speed because of danger of colliding with the mail carrier as he stops and starts along the edge of the road, street or highway.

(3) Any sanitation vehicle operated by a county, municipality or other political subdivision of this state or by a contractor under contract with a county, municipality or other political subdivision of this state to collect solid waste, refuse or recyclable material may be marked with flashing or oscillating white- or amber-colored lights so as to warn approaching travelers to decrease speed because of the danger of colliding with the sanitation collection vehicle as it stops and starts along the road, street or highway.

(4) Any nonlaw enforcement vehicle being used to lead and facilitate the movement of a military funeral procession may be marked with blinking, rotating or oscillating purple lights. "Military funeral procession" means two (2) or more vehicles accompanying the body of a deceased member of the United States Armed Forces, or traveling to the church, chapel or other location at which the funeral service or entombment is to be held.

(5) Any operator of an emergency vehicle authorized to be marked with blinking, rotating or oscillating lights in accordance with this section, shall use blinking, rotating or oscillating lights when operating the emergency vehicle at a speed in excess of thirty (30) miles per hour over the posted speed limit.

HISTORY: Codes, 1942, § 8229-08; Laws, 1948, ch. 343, § 16; Laws, 1950, ch. 407, § 5; Laws, 1962, ch. 527; Laws, 1964, ch. 455, § 1; Laws, 1970, ch. 484, § 1; Laws, 1979, ch. 398, § 1; Laws, 1987, ch. 333, § 1; Laws, 1994, ch. 517, § 1; Laws, 1995, ch. 581, § 1; Laws, 2004, ch. 425, § 5; Laws, 2006, ch. 468, § 2; Laws, 2014, ch. 314, § 2; Laws, 2016, ch. 461, § 1, eff from and after July 1, 2016; Laws, 2018, ch. 451, § 2, eff from and after July 1, 2018.

Editor's Notes — Laws of 2018, ch. 400, § 1, effective March 19, 2018, provides: "SECTION 1. This act shall be known and may be cited as the 'Kaelin Kersh Act'."

Cross References — Standards for design, construction, equipment and maintenance of ambulances, see § 41-59-25.

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to this section, the private vehicle of a volunteer fireman may be equipped with a blinking, oscillating or rotating red light to be used only when that fireman is responding to an emergency call. Huskey, July 8, 1996, A.G. Op. #96-0450.

A private vehicle of a volunteer fireman may be equipped with a blinking, oscillating, or rotating red light to be used only when that fireman is responding to an emergency call. Baker, November 20, 1998, A.G. Op. #98-0702.

Nothing in this section authorizes the use of blinking, oscillating or rotating white lights for personal vehicles of volunteer firemen when responding to calls. Enlow, Jan. 3, 2003, A.G. Op. #02-0752.

RESEARCH REFERENCES

ALR.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle. 64 A.L.R.3d 551.

Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

Am. Jur.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 591.1 (complaint arising out of intersection collision with police vehicle with flashing lights and siren activated).

10 Am. Jur. Proof of Facts 3d 203, Negligent Operation of Emergency Vehicle.

§ 63-7-20. Use of blue and red lights and alternating flashing headlights.

(1) It is unlawful for any person, other than a law enforcement officer on duty, to use or display blue lights on a motor vehicle as provided for in Section 63-7-19.

(2) It is unlawful for any person to use or display red lights on a motor vehicle except as provided for in Section 63-7-19. It is not unlawful for the red lights authorized for private or department-owned vehicles used by firemen of volunteer fire departments, as provided in Section 63-7-19, to remain mounted on such vehicles when the lights are not in use.

(3) It is unlawful for any vehicle to use alternating flashing headlights except an emergency vehicle as provided in Section 63-7-19.

(4) A person violating this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00).

HISTORY: Codes, 1942, § 8229-08.5; Laws, 1972, ch. 352, § 1; Laws, 1979, ch. 398, § 2; Laws, 1987, ch. 333, § 2; Laws, 1994, ch. 517, § 2; Laws, 1995, ch. 581, § 2; Laws, 1997, ch. 565, § 1, eff from and after passage (approved April 23, 1997).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

A private vehicle of a volunteer fireman may be equipped with a blinking, oscillating, or rotating red light to be used only when that fireman is responding to an emergency call. Baker, November 20, 1998, A.G. Op. #98-0702.

Modulating headlights, which operate at a lower intensity when an object is in front of them and at a higher intensity when there is no object in front of them, do not violate the statute. Busby, Aug. 31, 2001, A.G. Op. #01-0546.

RESEARCH REFERENCES

ALR.

Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 203.

10 Am. Jur. Proof of Facts 3d 203, Negligent Operation of Emergency Vehicle.

CJS.

60 C.J.S., Motor Vehicles §§ 43-45.

§ 63-7-21. Mounting of electric lamps, clearance lamps, and side-marker lamps.

Where electric lamps are used to meet the requirements of Section 63-7-11, they shall be securely and permanently affixed to the permanent structure of the motor vehicle, except for the combination marker lamps on pole-trailers prescribed in subsection (6) of Section 63-7-15.

Required clearance lamps shall be mounted in such a manner as to indicate the extreme width of the motor vehicle and as near the top thereof as practicable.

Side-marker lamps may be in combination with clearance lamps and may use the same light source.

HISTORY: Codes, 1942, § 8229-03; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 11.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 205.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 748 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 43-45.

60A C.J.S., Motor Vehicles §§ 629-633, 666, 710.

§ 63-7-23. Color of lighting devices.

(1) The color of lighting devices shall be as follows:

(a) All front clearance lamps, and all side marker lamps, except the one on each side at or near the rear of any bus, truck, truck tractor, semitrailer, full trailer or pole trailer, shall when lighted display an amber color.

(b) No red lighting device of any character shall be mounted at any place other than on or near the rear of any bus, truck, truck tractor, semitrailer, full trailer or pole trailer. However, school buses owned by or under contract with a school district of this state may have affixed at or near the front end thereof red lighting devices that may be caused to blink when the school bus is stopped or in the process of stopping for the purpose of loading or unloading school children. A school bus also may be equipped with a white, flashing strobe light on the roof of the vehicle installed according to standards promulgated by the Mississippi Department of Education as authorized under Section 37-41-1(c).

(c) All rear clearance lamps, the side marker lamps on each side at or near the rear, and any other lamps mounted on the rear, on any bus, truck, truck tractor, semitrailer, full trailer or pole trailer shall when lighted display a red color. However, the stoplight or other warning device on the rear of any motor vehicle may be red or amber.

(d) Backing lights of any color may be mounted on the rear of any motor vehicle if the switch controlling such lights be so arranged that they may be turned on only when the vehicle is in reverse gear. Such backing lights when unlighted shall be so colored or otherwise arranged as not to reflect objectionable glare in the eyes of drivers of vehicles approaching from the rear.

(2) Auxiliary white lights mounted on or near the rear of a motor vehicle, or visible from the rear of the vehicle, shall not be prohibited under the provisions of this section if (a) the vehicle's gross weight is less than twelve thousand one (12,001) pounds, and (b) the lights are designed by the motor vehicle manufacturer or an after-market parts manufacturer so that they may only be illuminated whenever the vehicle is not in motion and the transmission of the vehicle is not capable of transmitting power to the wheels.

(3) No provision of this section shall be so construed as to prohibit the use of any white light or lights for the purpose of illuminating license plates.

(4) Any lamps illuminated when the vehicle is in motion, other than those expressly required or permitted by the provisions of this chapter or other law, shall, if visible from the front, display only a white or amber light; if visible

from either side, display an amber light; and if visible from the rear, display a red light.

HISTORY: Codes, 1942, §§ 8229-04, 8229-08; Laws, 1948, ch. 343, §§ 12, 16; Laws, 1950, ch. 407, § 5; Laws, 1962, chs. 526, 527; Laws, 1964, ch. 455, § 1; Laws, 1970, ch. 484, § 1; Laws, 1994, ch. 343, § 1; Laws, 2001, ch. 556, § 1; Laws, 2016, ch. 461, § 2, eff from and after July 1, 2016.

OPINIONS OF THE ATTORNEY GENERAL

The use of lights of colors other than white or amber shining from underneath motor vehicles vehicles is a violation of this section. Smith, August 20, 1999, A.G. Op. #99-0432.

§ 63-7-25. Visibility of clearance, side-marker, and tail lamps.

Clearance, side-marker, and tail lamps shall, when lighted, be capable of being seen at a distance of five hundred feet under normal atmospheric conditions during the time when lights are required. The light from front clearance lamps shall be visible to the front, from side-marker lamps to the side, and from rear clearance and tail lamps to the rear, of the motor vehicle.

HISTORY: Codes, 1942, § 8229-05; Laws, 1948, ch. 343, § 13.

JUDICIAL DECISIONS

1. In general.

A driver's employer was negligent per se for violation of § 63-7-27 in furnishing the driver with a truck on which the brake lights were not working. However, the employer was not negligent per se as to the truck's tail lights for violation of § 63-7-25 where the red plastic covering both tail lights was broken but both bulbs were burning; the issue of the employer's negligence as to the tail lights was a matter for the jury. M & M Pipe & Pressure Vessel Fabricators, Inc. v. Roberts, 531 So. 2d 615, 1988 Miss. LEXIS 437 (Miss. 1988).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 700-703, 707.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 1001, 1341-1524, 1531-2060.

22 Am. Jur. Proof of Facts 2d 225, Defective or Improperly Operated Taillights.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

60A C.J.S., Motor Vehicles §§ 629-633, 710.

§ 63-7-27. Performance and visibility of stop lights; incorporation with tail lamps.

Stop lights shall be actuated upon application of the service (foot) brake and shall be capable of being seen and distinguished from a distance of one hundred feet to the rear of the vehicle in normal daylight. Stop lights shall not project a glaring or dazzling light.

A stop light may be incorporated with a tail lamp.

HISTORY: Codes, 1942, § 8229-06; Laws, 1948, ch. 343, § 14.

JUDICIAL DECISIONS

1. In general.

A driver's employer was negligent per se for violation of § 63-7-27 in furnishing the driver with a truck on which the brake lights were not working. However, the employer was not negligent per se as to the truck's tail lights for violation of § 63-7-25 where the red plastic covering both tail lights was broken but both bulbs were burning; the issue of the employer's negligence as to the tail lights was a matter for the jury. M & M Pipe & Pressure Vessel Fabricators, Inc. v. Roberts, 531 So. 2d 615, 1988 Miss. LEXIS 437 (Miss. 1988).

That a motorist actuated a stop signal on the automobile by applying the brake does not necessarily exonerate the motorist from a charge of negligence toward a following car. Box v. Swindle, 306 F.2d 882, 1962 U.S. App. LEXIS 4242 (5th Cir. Miss. 1962).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 204.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 759 et seq.

22 Am. Jur. Proof of Facts 2d 225, Defective or Improperly Operated Taillights.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

60A C.J.S., Motor Vehicles §§ 629-633.

§ 63-7-29. Mounting, visibility and color of reflectors; incorporation with tail lamps.

(1) **Mounting of reflectors.** No reflector required by the provisions of this chapter shall be mounted upon the motor vehicle at a height to exceed sixty inches, nor less than twenty-four inches, above the ground on which the motor vehicle stands.

(2) **Visibility of reflectors.** Every reflector shall be of such size and characteristics as to be readily visible at night from all distances within five hundred feet to fifty feet from the motor vehicle when directly in front of a normal headlight beam.

(3) **Rear reflectors incorporated with tail lamps.** One or both of the required rear red reflectors may be incorporated within the tail lamp or tail lamps; any such tail lamps shall be located within the height limits specified for reflectors. Whether or not the rear reflectors are incorporated in tail lamps, they shall be located on the rear of the motor vehicle at opposite sides and shall also meet the requirements as to visibility set forth in this section.

(4) **Color of reflectors.** All reflectors mounted on any bus, truck, truck tractor, semi-trailer, full trailer, or pole-trailer, shall reflect an amber color, except those placed on the rear and on the sides nearest to the rear thereof, which shall reflect a red color.

Any reflectors on a vehicle, other than those expressly required or permitted by the provisions of this chapter, shall, if visible from the front, reflect a white or amber light, if visible from either side, reflect an amber light, and if visible from the rear, reflect a red light.

HISTORY: Codes, 1942, §§ 8229-07, 8229-08; Laws, 1938, ch. 200; Laws, 1948, ch. 343, §§ 15, 16; Laws, 1950, ch. 407, § 5; Laws, 1962, ch. 527; Laws, 1964, ch. 455, § 1; Laws, 1970, ch. 484, § 1, eff from and after July 1, 1970.

JUDICIAL DECISIONS

1. In general.

Absence of reflectors or other lighting devices on a trailer eight feet wide while being towed after dark by a truck 6 feet 4 inches wide, on a well-traveled country road from 21 to 23 feet in width, held negligence as to driver of vehicle proceeding in opposite direction. Dent v. Luckett, 242 Miss. 559, 135 So. 2d 840, 1961 Miss. LEXIS 593 (Miss. 1961).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 203-205.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

60A C.J.S., Motor Vehicles §§ 629-633.

§ 63-7-31. Multiple-beam road-lighting equipment; distributions of light; beam indicator.

Except as hereinafter provided in this chapter, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combinations thereof on motor vehicles other than a motorcycle or motor-driven cycle shall be so arranged that the driver may control the selection between distributions of light projected to different elevations, subject to the following requirements and limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(b) There shall be lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this state after January 1, 1954, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

HISTORY: Codes, 1942, § 8229-11; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 19; Laws, 1954, ch. 326, § 1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instructions.

1. In general.

Inability to stop within the range of the headlights is not negligence per se, but the character, appearance and visibility of unlighted vehicles parked on the highway should be considered. Hankins v. Harvey, 248 Miss. 639, 160 So. 2d 63, 1964 Miss. LEXIS 288 (Miss. 1964).

2. Instructions.

In a personal injury action arising out of an accident in which a pedestrian was struck by an automobile, an instruction to the jury which covered the pedestrian's duty to yield the right-of-way to all vehicles operating on the road, but which failed to cover the driver's duty to the pedestrian, was incomplete, in view of § 63-7-31, and defendant's testimony that he did not see the plaintiff until he was 30 feet away from her. Ross v. Miller, 441 So. 2d 541, 1983 Miss. LEXIS 3025 (Miss. 1983).

Failure of an instruction to state the requirements of this section [Code 1942, § 8229-11] in the language of the statute was held not reversible error. Hankins v. Harvey, 248 Miss. 639, 160 So. 2d 63, 1964 Miss. LEXIS 288 (Miss. 1964).

RESEARCH REFERENCES

ALR.

Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights. 63 A.L.R.3d 824.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle. 64 A.L.R.3d 551.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 203-205.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 757 et seq.

22 Am. Jur. Proof of Facts 2d 173, Defective or Improperly Operated Headlights.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

60A C.J.S., Motor Vehicles §§ 629-633, 666, 711.

§ 63-7-33. Multiple-beam road-lighting equipment; control by operator.

Whenever a motor vehicle is being operated on a highway or shoulder adjacent thereto during the times specified by law, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the requirement that whenever the driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver.

HISTORY: Codes, 1942, § 8229-12; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 20; Laws, 1954, ch. 326, § 2.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-10. [Reserved for future use.]
11. Under former law.

1. In general.
Although one federal district judge has in dicta interpreted § 63-7-33 to effect that change to lower beam should be made only when there is oncoming vehicle within 500 feet, statute is also subject to interpretation that driver must switch to lower beam "no later than" within 500 feet of oncoming vehicle but may use low beams sooner if they still reveal persons and objects at safe distance in advance of vehicle. Lidy v. Film Transit, Inc., 796 F.2d 103, 1986 U.S. App. LEXIS 27890 (5th Cir. Miss. 1986).

2.-10. [Reserved for future use.]

11. Under former law.
Failure to depress or dim headlights on a bus stopped on the travelled portion of a highway to permit a passenger to alight did not make out a case of negligence so as to prevent a directed verdict against the passenger where she was struck by a car coming toward the bus while she was undertaking to cross the highway from behind the bus. Miller v. Dixie Greyhound Lines, Inc., 164 F.2d 977, 1947 U.S. App. LEXIS 2014 (5th Cir. Miss. 1947).

RESEARCH REFERENCES

ALR.
Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights. 63 A.L.R.3d 824.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle. 64 A.L.R.3d 551.

Am. Jur.
8 Am. Jur. 2d, Automobiles and Highway Traffic § 816.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 299.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 810, 811, 1341-1524, 1531-2060.

7 Am. Jur. Proof of Facts 239, Lights.

22 Am. Jur. Proof of Facts 2d 173, Defective or Improperly Operated Headlights.

CJS.
60A C.J.S., Motor Vehicles § 710.

§ 63-7-35. Single-beam road-lighting equipment.

Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted on motor vehicles manufactured and sold prior to April 10, 1948, in lieu of multiple-beam road-lighting equipment specified in Section 63-7-31 if the single distribution of light complies with the following requirements and limitations:

(a) The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

(b) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

HISTORY: Codes, 1942, § 8229-13; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 21.

RESEARCH REFERENCES

ALR.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle. 64 A.L.R.3d 551.

Am. Jur.

22 Am. Jur. Proof of Facts 2d 173, Defective or Improperly Operated Headlights.

§ 63-7-37. Applicability of Sections 63-7-31 through 63-7-35.

The provisions of Sections 63-7-31 through 63-7-35, relative to lighting equipment, shall take effect and be operative with respect to equipment installed in motor vehicles after April 10, 1948, and with respect to the equipment on other motor vehicles, the provisions of Chapter 200, Laws of 1938, shall govern unless new equipment is installed therein, in which event such new equipment shall be governed by the provisions of said sections.

HISTORY: Codes, 1942, § 8229-14; Laws, 1948, ch. 343, § 22.

§ 63-7-39. Display of lights on parked vehicles.

Whenever a vehicle is parked or stopped upon a highway whether attended or unattended during the times mentioned in Section 63-7-11, there shall be displayed upon the left side of such vehicle one or more lamps projecting a white or amber light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle and one or more lamps projecting a red light visible under like conditions from a distance of five hundred feet to the rear. However, local authorities may provide by ordinance that no lights used be displayed upon any such vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of five hundred feet upon such highway.

HISTORY: Codes, 1942, § 8229-15; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 23; Laws, 1960, ch. 407.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-10. [Reserved for future use.]
11. Under former law.

1. In general.

The stopping of a truck on a bridge at night without any lights constituted a violation. Simmons v. Keyes, 247 Miss. 315, 152 So. 2d 909, 1963 Miss. LEXIS 303 (Miss. 1963).

Parking of a tractor and trailers at least two feet on the paved portion of the road, although there was room to park them entirely off, on a dark, foggy night, without rear lights, reflectors, or flares, is a violation of this section [Code 1942,

§ 8229-15]. Jester v. Bailey, 239 Miss. 384, 123 So. 2d 442, 1960 Miss. LEXIS 296 (Miss. 1960).

2.-10. [Reserved for future use.]

11. Under former law.

Failure to depress or dim headlights on a bus stopped on the travelled portion of a highway to permit a passenger to alight did not make out a case of negligence so as to prevent a directed verdict against the passenger where she was struck by a car coming toward the bus while she was undertaking to cross the highway from behind the bus. Miller v. Dixie Greyhound Lines, Inc., 164 F.2d 977, 1947 U.S. App. LEXIS 2014 (5th Cir. Miss. 1947).

Statute requires lights where automobile is stopped on highway for temporary purposes. Frazier v. Hull, 157 Miss. 303, 127 So. 775, 1930 Miss. LEXIS 279 (Miss. 1930).

Where plaintiff was placing tools in automobile after changing tire on highway, and was struck by defendant's automobile, statute required plaintiff to have rear light. Frazier v. Hull, 157 Miss. 303, 127 So. 775, 1930 Miss. LEXIS 279 (Miss. 1930).

RESEARCH REFERENCES

ALR.

Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares. 67 A.L.R.2d 12.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle. 61 A.L.R.3d 13.

Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights. 63 A.L.R.3d 824.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle. 64 A.L.R.3d 551.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 206.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 906-909, 915, 922.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 346-356.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 972-976, 1341-1524, 1531-2060.

CJS.

60A C.J.S., Motor Vehicles §§ 774, 775.

§ 63-7-41. Sale, use, etc., of lamps modifying original design or performance of vehicle.

No person shall have for sale, sell or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer or semitrailer or use upon any such vehicle any head lamp, auxiliary driving lamp, rear lamp, signal lamp or reflector which reflector is required hereunder, or parts of any of the foregoing, which tend to change the original design or performance, unless of a type which has been submitted to the department of public safety and approved by it.

No person shall have for sale, sell or offer for sale for use upon or as part of the equipment of a motor vehicle, trailer or semitrailer any lamp or device mentioned in this section which has been approved by the department unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

No person shall use upon any motor vehicle, trailer or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted and aimed in accordance with instructions of the department.

HISTORY: Codes, 1942, § 8246; Laws, 1938, ch. 200; Laws, 1954, ch. 326, § 3.

§ 63-7-43. Authority of department as to lighting devices.

(1) The department is hereby authorized to approve or disapprove lighting devices and to issue and enforce regulations establishing standards and specifications for the approval of such lighting devices, their installation, aiming, and readjustment. Such regulations shall correlate with and, so far as practicable, conform to the then current standards and specifications of the Society of Automotive Engineers applicable to such equipment.

(2) The department is hereby required to approve or disapprove any lighting device, of a type on which approval is specifically required in this chapter within a reasonable time after such device has been submitted.

(3) The department is further authorized to set up the procedure which shall be followed when any lighting device is submitted for approval.

(4) The department upon approving any lighting device shall issue to the applicant a certificate of approval together with any instructions determined by it.

(5) The department shall publish lists of all lighting devices by name and type which have been approved by it.

HISTORY: Codes, 1942, § 8247; Laws, 1938, ch. 200; Laws, 1954, ch. 326, § 4.

§ 63-7-45. Revocation or suspension of approval of lighting device.

When the department has reason to believe that an approved lighting device as being sold commercially does not comply with the requirements of this chapter, it may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of said approved device. After said hearing the department shall determine whether said approved device meets the requirements of this chapter. If said device does not meet such requirements, it shall give notice to the person holding the certificate of approval for such device in this state.

If after the expiration of ninety days after such notice the person holding the certificate of approval for such device has failed to satisfy the department that said approved device as thereafter to be sold meets the requirements of this chapter, the department shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this chapter. The department may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this chapter. The department may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of such approved devices, and if such device upon such retest fails to meet the requirements of this chapter, the department may refuse to renew the certificate of approval of such device.

HISTORY: Codes, 1942, § 8248; Laws, 1938, ch. 200.

§ 63-7-47. Display of flag on projecting load; display of rotating or oscillating amber strobe-type lamp or light-emitting diode light on projecting load between sunset and sunrise or under certain low-light conditions.

(1) Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the rear or body of such vehicle, there shall be displayed at the extreme rear end of the load a red flag or cloth not less than sixteen (16) inches square.

(2) During the period described in Section 63-7-11, any vehicle transporting a load of timber products that extends four (4) feet or more beyond the rear or body of that vehicle, shall have affixed as close as practical to the end of the load a rotating or oscillating amber strobe-type lamp or light-emitting diode light.

HISTORY: Codes, 1942, § 8229-16; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 24; Laws, 2001, ch. 557, § 3; Laws, 2011, ch. 434, § 1, eff from and after July 1, 2011; Laws, 2022, ch. 434, § 2, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (2), substituted “During the period described in Section 63-7-11” for “From one-half (1/2) hour before sunset to one-half (1/2) hour after sunrise” and “extends four (4) feet or more beyond the rear or body of” for “extends more than four (4) feet beyond the bed or trailer of.”

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 749.

§ 63-7-49. Electrical connections between towing and towed vehicles.

Means for establishing electric connection between towing and towed vehicles, and other detachable electric connections, shall be mechanically and electrically adequate, and free of short or open circuits. Suitable provision shall be made in every detachable connection to afford reasonable assurance against accidental disconnection. Precaution shall be taken to provide sufficient slack in the connecting wire or cable without twisting or kinking thereof.

HISTORY: Codes, 1942, § 8229-09; Laws, 1948, ch. 343, § 17.

§ 63-7-51. General vehicle brake equipment requirements.

(1) Every motor vehicle, other than a motorcycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(2) Every motorcycle, and bicycle with motor attached, when operated upon a highway shall be equipped with at least one brake, which may be operated by hand or foot.

(3) Every trailer carrying over one ton, when operated upon a highway, shall be equipped with brakes adequate to control the movement thereof and to stop and to hold such vehicle, and so designed to be applied by the driver of the towing motor vehicle from its cab; said brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle, the brakes shall be automatically applied.

(4) Every new motor vehicle, except a motorcycle, hereafter sold in this state and operated upon the highways, and every new trailer, except a trailer of two axles of less than 2,000 pounds gross towed by an automobile, hereafter sold in this state and operated upon the highways, shall be equipped with service brakes upon all wheels of every such vehicle.

HISTORY: Codes, 1942, § 8249; Laws, 1938, ch. 200.

Cross References — Brakes on school transportation vehicles, see § 37-41-53.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instructions.
3. Jury questions.
4. Miscellaneous.
5.-15. [Reserved for future use.]
16. Under former laws.

1. In general.

Motorist invoking sudden emergency rule must prove that his car had brake equipment required by this section [Code 1942, § 8249], that in exercise of reasonable care he could not have known of any defects therein, that he made reasonable effort to use both braking systems, that both failed, or that on failure of foot brakes he could not have stopped with the emergency brakes, and that after the emergency arose he exercised the care of a reasonable prudent driver. Fink v. East Mississippi Electric Power Asso., 234 Miss. 221, 105 So. 2d 548, 1958 Miss. LEXIS 480 (Miss. 1958).

2. Instructions.

An instruction calling for a court ruling that the driver of a truck which struck a car ahead, halted by a traffic light, when the brakes failed to hold, was negligent as a matter of law, is properly refused as lacking the qualification that the failure of the brakes must have been attributable to negligence. Phillips v. Delta Motors Lines, Inc., 235 Miss. 1, 108 So. 2d 409, 1959 Miss. LEXIS 397 (Miss. 1959).

In an action against the driver by a share-the-expense guest for injuries allegedly sustained when the automobile foot brake failed to function properly resulting in the driver's automobile colliding with the rear of another automobile which had come to a stop, a sudden emergency instruction was erroneous which assumed by the use of the words "failure of the defendant's brakes" that there was evidence in the record upon which the jury might find that both braking systems were defective, when in fact there was no evidence to show that the emergency brake was in any way defective, and which omitted entirely the statement that after the emergency arose, the defendant exercised such care as a reasonably prudent and capable driver would use under the unusual circumstances. Moore v. Taggart, 233 Miss. 389, 102 So. 2d 333, 1958 Miss. LEXIS 396 (Miss. 1958).

In action for damage to automobile arising out of ramming by truck from rear, trial court committed no error in refusing instruction to plaintiff based on assumption that brakes on defendant's truck were not efficient, when, as a matter of fact, there was no such evidence in record. Wilburn v. Gordon, 209 Miss. 27, 45 So. 2d 844, 1950 Miss. LEXIS 359 (Miss. 1950).

3. Jury questions.

In an action for the death of an eight-year-old child killed when struck by a large diesel trailer-truck, which was not equipped with service brakes, the question of the truck driver's negligence was for the jury under conflicting evidence. Reed v. Eubanks, 232 Miss. 27, 98 So. 2d 132, 1957 Miss. LEXIS 441 (Miss. 1957).

4. Miscellaneous.

Jury's finding that noncompliance with this requirement did not contribute to accident which occurred when heavily-loaded trailer, on losing rear wheel, veered into lane of oncoming traffic, held unsupported by evidence. Braud v. Baker, 324 F.2d 213, 1963 U.S. App. LEXIS 3801 (5th Cir. Miss. 1963).

Widow of employee who drove city tractor towing trailer of fair concessionaire over public streets in conjunction with state fair being operated by city, knowing that the trailer was not equipped with brakes as required by this section [Code 1942, § 8249], could not recover against the city or the fair concessionaire for the death of the employee resulting from injuries sustained in an accident caused by the lack of such brakes, even though the employee without compulsion or protest merely obeyed the orders of his superior who also knew that the trailer lacked brakes, since, in view of Code 1942, §§ 8277 and 8278, both the city and the employee were in pari delicto in violating the criminal statute. Downing v. Jackson, 199 Miss. 464, 24 So. 2d 661, 1946 Miss. LEXIS 217 (Miss. 1946).

5.-15. [Reserved for future use.]

16. Under former laws.

In salesman's action against employer for injuries sustained when employer's truck in which salesman was riding while on employer's business and which was driven by another employee overturned, allegedly because of defective brakes, statute making prima facie case for plaintiff upon showing injury and that motor vehicle at time of accident was operated contrary to provisions of Motor Vehicle Law held inapplicable, since statute cannot be invoked by servant against master. Dr Pepper Bottling Co. v. Gordy, 174 Miss. 392, 164 So. 236, 1935 Miss. LEXIS 75 (Miss. 1935).

Motorist on highway with brakes so defective that when applied they caused automobile to turn to right was negligent. Wheat v. Wheat, 162 Miss. 595, 139 So. 849, 1932 Miss. LEXIS 152 (Miss. 1932).

That pedestrian when injured by automobile coming from behind was on right side of road held not to bar recovery for injuries due to defective brakes. Wheat v. Wheat, 162 Miss. 595, 139 So. 849, 1932 Miss. LEXIS 152 (Miss. 1932).

RESEARCH REFERENCES

ALR.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes. 72 A.L.R.2d 6.

Automobiles: liability of owner or operator of motor vehicle for injury, death, or property damage resulting from defective brakes. 40 A.L.R.3d 9.

Failure to set brakes, or maintain adequate brakes, as causing accidental runaway of parked motor vehicle. 42 A.L.R.3d 1252.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 199.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 753-755.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 373.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 992-994, 1341-1524, 2013-2017.

3 Am. Jur. Proof of Facts 1, Brakes.

16 Am. Jur. Proof of Facts 2d 447, Defective Bicycle Design.

47 Am. Jur. Proof of Facts 2d 127, Negligent Operation of Motorcycle.

11 Am. Jur. Proof of Facts 3d 395, Negligence of Motorist in Accident Involving Bicyclist.

11 Am. Jur. Proof of Facts 3d 503, Motor Vehicle Accident – Contributory Negligence by Bicyclist.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

60A C.J.S., Motor Vehicles §§ 625-628, 681.

§ 63-7-53. Stopping ability of brakes; maintenance and adjustment of brakes.

(1) The service brakes upon any motor vehicle or combination of vehicles shall be adequate to stop such vehicle or vehicles when traveling twenty miles per hour within a distance of thirty feet when upon dry asphalt or concrete pavement surface free from loose material where the grade does not exceed one per cent.

(2) Under the above conditions the hand brake shall be adequate to stop such vehicle or vehicles within a distance of fifty-five feet and said hand brake shall be adequate to hold such vehicle or vehicles stationary on any grade upon which operated.

(3) Under the above conditions, the service brakes upon a motor vehicle equipped with two-wheel brakes only, and when permitted under Section 63-7-51, shall be adequate to stop the vehicle within a distance of forty feet and the hand brake adequate to stop the vehicle within a distance of fifty-five feet.

(4) All braking distances specified in this section shall apply to all vehicles mentioned, whether such vehicles are not loaded or are loaded to the maximum capacity permitted under law.

(5) All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

HISTORY: Codes, 1942, § 8249; Laws, 1938, ch. 200.

Cross References — Brakes on school transportation vehicles, see § 37-41-53.
Gross weight of vehicles and loads, see §§ 63-5-29 et seq.

RESEARCH REFERENCES

ALR.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes. 72 A.L.R.2d 6.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 199.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 753-755.

CJS.

60 C.J.S., Motor Vehicles § 49, 50.

60A C.J.S., Motor Vehicles §§ 625-628, 681.

§ 63-7-55. Mufflers.

Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke. No person shall use a muffler cutout, bypass or similar device upon a motor vehicle on a highway.

HISTORY: Codes, 1942, § 8251; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

1. Probable cause to stop.

That defendant's car was emitting excessive exhaust was a violation of Miss. Code §§ 63-7-55 and 63-7-7, and gave a police officer probable cause to pull defendant's car over. Cagler v. State, 844 So. 2d 487, 2003 Miss. App. LEXIS 298 (Miss. Ct. App. 2003).

RESEARCH REFERENCES

ALR.

Products liability: motor vehicle exhaust systems. 72 A.L.R.4th 62.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 201.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 746.

13 Am. Jur. Proof of Facts 223, Defective Exhaust Systems.

CJS.

60 C.J.S., Motor Vehicles § 52.

§ 63-7-57. Mirrors.

Every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

HISTORY: Codes, 1942, § 8252; Laws, 1938, ch. 200.

JUDICIAL DECISIONS

ANALYSIS

1.-10. [Reserved for future use.]
11. Under former law.

1.-10. [Reserved for future use.]

11. Under former law.

Truck driver was bound to use ordinary care for those in rear. Collins Baking Co. v. Wicker, 166 Miss. 264, 142 So. 8, 1932 Miss. LEXIS 303 (Miss. 1932).

RESEARCH REFERENCES

ALR.

Liability for failure to provide motor vehicle with adequate rearview mirror. 27 A.L.R.2d 1040.

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 745.

CJS.

60A C.J.S., Motor Vehicles §§ 621-623.

§ 63-7-59. Windows and window glass generally; windshield wipers; tinted or darkened windows prohibited unless certified; additional fee for inspection stations conducting tests of light transmittance of motor vehicle windows; exceptions; penalties; public awareness program.

(1) No person shall drive any motor vehicle required to be registered in this state upon the public roads, streets or highways in this state with any sign or poster, or with any glazing material which causes a mirrored effect, upon the front windshield, side wings or side or rear windows of the vehicle, other than a certificate or other paper required or authorized to be so displayed by law. No person shall drive any motor vehicle required to be registered in this state upon the public roads, streets or highways in this state with any tinted film, glazing material or darkening material of any kind on the windshield of a motor vehicle except material designed to replace or provide a sun shield in the uppermost area as authorized to be installed by manufacturers of vehicles under federal law.

(2) From and after July 1, 2006, no person shall drive any motor vehicle required to be registered in this state upon the public roads, streets or highways in this state with any window tinted or darkened, by tinted film or otherwise, unless:

(a) The windshield of the vehicle has affixed to it a label as provided under subsection (6) of this section certifying that all the windows of the vehicle have a light transmittance of twenty-eight percent (28%) or more; or

(b) The owner or operator of the vehicle has a certificate of medical exemption issued under subsection (4) of this section.

(3) The prohibitions of subsection (2) of this section shall not apply to:

(a) School buses, other buses used for public transportation, any bus or van owned or leased by a nonprofit organization duly incorporated under the laws of this state or any funeral home services vehicle, any limousine owned or leased by a private or public entity, or any government-owned law enforcement or fire department vehicle or any volunteer fire department vehicle;

(b) Any window behind the front two (2) side windows, including the rear window, of any pickup truck, van, motor home, recreational vehicle, sport utility vehicle or multipurpose vehicle that has been tinted or darkened after factory delivery to the extent that the light transmittance of the window meets the minimum light transmittance requirements authorized to be installed for that window and for that vehicle under federal law or regulations before factory delivery; or

(c) Any other motor vehicle the windows of which have been tinted or darkened before factory delivery as permitted by federal law or federal regulations.

(4) Notwithstanding the provisions of subsection (2) of this section, it shall be lawful for any person who has been diagnosed by a physician licensed to practice medicine in the State of Mississippi as having a physical condition or disease that is seriously aggravated by minimum exposure to sunlight to place or have placed upon the windshield or windows of any motor vehicle which he owns or operates or within which he regularly travels as a passenger tinted film or other darkening material that would otherwise be in violation of this section. However, any vehicle, in order to be exempt under this subsection (4), shall have prominently displayed on the vehicle dashboard a certificate of medical exemption on a form prepared by the Commissioner of Public Safety and signed by the person on whose behalf the certificate is issued. The special certificate authorized by this subsection (4) shall be issued free of charge to the applicants through the offices of the tax collectors of the counties. Each applicant shall present to the issuing official:

(a) An affidavit signed personally by the applicant and signed and attested by a physician which states the applicant's physical condition or disease which entitles him to an exemption under this subsection (4); and

(b) Proof of ownership of the motor vehicle by the applicant, or a signed affidavit by the owner of a motor vehicle operated for the use of the applicant, for which he is obtaining the certificate.

(5) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(6) The Department of Public Safety shall issue labels to official tint inspection stations for affixing to the windshield of every motor vehicle required to be inspected in this state with a window therein which has been tinted or darkened with any tinted film or other darkening material after factory delivery. The label shall be affixed to the lower left corner of the windshield, shall be legible from outside the vehicle, and shall indicate the label registration number, a certification of compliance with Mississippi law, and such other information as the Commissioner of Public Safety deems appropriate. The labels shall be of a type which is pressure-sensitive, self-destructive upon removal, and no larger than one (1) inch square in size. Before affixing the label, the inspection station shall conduct a test to determine that the window complies with the light transmittance requirements prescribed under subsection (2) of this section. The test shall be conducted using such methods or devices as may be approved and certified not less often than annually by the Department of Public Safety. For conducting

such tests, tint inspection stations shall charge and collect a fee of Five Dollars ($5.00). Two Dollars ($2.00) of the fee shall be retained by the inspection station, and Three Dollars ($3.00) of the fee shall be remitted to the Department of Public Safety and may be expended, upon legislative appropriation, for the operational expenses of the department. No fee shall be charged unless a test is actually performed under this subsection (6). The presence of a label upon the windshield of a motor vehicle shall indicate that the person who affixed the label certifies that the windows of the vehicle meet the restrictions of subsection (2) of this section as to light transmittance.

(7) No person shall install any tinted film, darkening material, glazing material or any other material upon the windshield or any window of a motor vehicle which, after the installation thereof, would result in such vehicle being in violation of subsection (2) of this section.

(8) No label shall be issued for a vehicle on which the windshield or any window of the vehicle has been darkened by the installation of tinted film or by other means, except as authorized under this section.

(9) It shall be unlawful for any person to alter or reproduce any label or certificate of medical exemption approved by the Commissioner of Public Safety under this section for the purpose of misleading law enforcement officers or motor vehicle inspection stations, or to knowingly use any approved label or certificate except as authorized by this section.

(10) Any person violating subsection (7), (8) or (9) of this section, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or imprisonment in the county jail for not more than three (3) months, or by both such fine and imprisonment.

(11) Any violation of this section other than a violation of subsection (7), (8) or (9) of this section shall be punishable upon conviction as provided in Section 63-7-7.

(12) Violations of this section shall be enforced only by law enforcement officers of the Mississippi Department of Public Safety and municipal law enforcement officers of municipalities having a population of two thousand (2,000) or more on the public roads, streets and highways under their jurisdiction.

(13) The Department of Public Safety shall initiate a public awareness program designed to inform and educate persons of the provisions of this section. Funds for such public awareness program shall be available through the office of the Governor's representative for highway safety programs.

HISTORY: Codes, 1942, § 8253; Laws, 1938, ch. 200; Laws, 1983, ch. 416; Laws, 1988, ch. 521, § 1; Laws, 1990, ch. 438, § 1; Laws, 1992, ch. 320, § 1; Laws, 2005, ch. 328, § 1; Laws, 2006, ch. 468, § 1; Laws, 2012, ch. 500, § 1; Laws, 2012, ch. 528, § 1; Laws, 2015, ch. 417, § 3, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of Chapter 528, Laws of 2012, effective July 1, 2012 (approved May 17, 2012), amended this section. Section 1 of Chapter 500, Laws of 2012, effective July 1, 2012 (approved May 1, 2012), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 528, Laws of 2012, which contains language that specifically provides that it supersedes § 63-7-59 as amended by Laws of 2012, ch. 500.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

"Each window of the vehicle" that is tinted must have a label affixed to it to show that the tinting is in compliance with state law; in the alternative, a certificate of compliance issued by the Department of Public Safety may accompany the vehicle to show that the tinting is in compliance with state law. Davis, Jr., Apr. 27, 2001, A.G. Op. #01-0252.

It is suggested that if a tint card must be used to issue a certificate of compliance, then a tint card may be used for enforcement purposes. Joseph, Dec. 20, 2002, A.G. Op. #02-0693.

While the language of the statute speaks to one possible device for enforcement, a tint card, the same language does not exclude the use of any other such as a tint meter. Joseph, Dec. 20, 2002, A.G. Op. #02-0693.

RESEARCH REFERENCES

ALR.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam. 32 A.L.R.4th 933.

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 768.

40 Am. Jur. Proof of Facts 2d 411, Driver's Failure to Maintain Proper Lookout.

5 Am. Jur. Proof of Facts 3d 191, Meteorological Conditions at a Particular Time and Place.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 998, 1341-1524, 1531-2060.

CJS.

60A C.J.S., Motor Vehicles §§ 621-623.

§ 63-7-60. Annual permits to official tint inspection stations for inspection of windshields and issuance of labels as required by Section 63-7-59.

(1) The Commissioner of Public Safety shall annually issue permits for and furnish instructions and all necessary forms to official tint inspection stations for the inspection of windshields and issuance of any label as required by Section 63-7-59.

(2) Application for a permit to operate an official tint inspection station shall be made on an official form and shall be granted only when the Commissioner of Public Safety is satisfied that the station is properly equipped and has competent personnel to make the inspection required by Section 63-7-59 and that the inspections will be properly conducted. A fee of Ten Dollars ($10.00) shall be charged any person or facility seeking a permit as an official tint inspection station, or a renewal thereof, for the purpose of defraying the cost of administering the processing of the application.

(3) The Commissioner of Public Safety shall properly supervise and cause inspections to be made of official tint stations and may, after reasonable notice, suspend or revoke and require the surrender of the permit issued to a station

which he finds is not properly equipped or conducted. The Commissioner of Public Safety shall maintain and post at the Office of the Department of Public Safety lists of all stations holding permits and of those whose permits have been suspended or revoked.

(4) The Commissioner of Public Safety is authorized to make necessary rules and regulations for the administration and enforcement of this section and Section 63-7-59, including a reasonable provision for the bonding of official tint inspection stations.

HISTORY: Laws, 2015, ch. 417, § 2, eff from and after July 1, 2015.

§ 63-7-61. Safety glass.

No person shall sell any new motor vehicle nor shall any new motor vehicle be registered unless such motor vehicle is equipped with safety glass throughout.

No person shall replace any glass in any motor vehicle except with safety glass, provided same can be easily or readily obtained.

The term "safety glass" shall mean any product composed of glass, so manufactured, fabricated, or treated as substantially to prevent shattering and flying of the glass when struck or broken or such other or similar product as may be approved by the department.

The department shall compile and publish a list of types of glass by name approved by it as meeting the requirements of this section. The State Tax Commission and county tax collectors shall not register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glass, and the State Tax Commission shall suspend the registration of any motor vehicle so subject to this section which it finds is not so equipped until it is made to conform to the requirements of this section.

HISTORY: Codes, 1942, § 8255; Laws, 1938, ch. 200; Laws, 2001, ch. 596, § 62, eff from and after July 1, 2001.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

RESEARCH REFERENCES

ALR.

Products liability: defective vehicular windows. 3 A.L.R.4th 489.

Am. Jur.

Answers, counterclaims, and replies, 3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 997, 1341-1524, 1531-2060.

§ 63-7-62. Unlawful installation of an object in lieu of an airbag.

Any person who knowingly installs or reinstalls any object in lieu of an airbag that was designed in accordance with federal safety regulations for the make, model and year of vehicle, as a part of a vehicle inflatable restraint system, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment for not more than one (1) year, or both.

HISTORY: Laws, 2003, ch. 477, § 1, eff from and after July 1, 2003.

§ 63-7-63. Safety belts.

It shall be unlawful for any person to buy, sell, lease, trade or transfer from or to Mississippi residents, at retail, an automobile which is manufactured or assembled commencing with the 1963 models, unless such automobile is equipped with safety belts installed for use in the left front and right front seats thereof. The violation of the provisions of this section shall be a misdemeanor and, upon conviction, the violator shall be fined not less than twenty-five dollars ($25.00), nor more than fifty dollars ($50.00), for each offense.

All such safety belts shall be of such type and be installed in a manner approved by the department of public safety of the State of Mississippi. The department shall establish specifications and requirements of approved types of safety belts and attachments. The department will accept, as approved, all seat belt installations and the belt and anchor meeting the specifications of the Society of Automotive Engineers.

HISTORY: Codes, 1942, § 8254.5; Laws, 1962, ch. 532, eff from and after passage (approved June 1, 1962).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Failure to use automobile seat belts does not constitute negligence as a matter of law. D. W. Boutwell Butane Co. v. Smith, 244 So. 2d 11, 1971 Miss. LEXIS 1314 (Miss. 1971).

RESEARCH REFERENCES

ALR.

Nonuse of seat belt as failure to mitigate damages. 80 A.L.R.3d 1033.

Automobile occupant's failure to use seat belt as contributory negligence. 92 A.L.R.3d 9.

Nonuse of automobile seatbelts as evidence of comparative negligence. 95 A.L.R.3d 239.

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 568, 569.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 1427.1 (failure to use safety belt).

35 Am. Jur. Trials 349, The Seatbelt Defense.

37 Am. Jur. Trials 401, Auto Product Liability: Defective Seatbelt.

16 Am. Jur. Proof of Facts 350, Seat Belt Accidents.

3 Am. Jur. Proof of Facts 3d 71, The Seatbelt Defense.

4 Am. Jur. Proof of Facts 3d 131, Crashworthiness of Motor Vehicle – Defective Automobile Seatbelts.

§ 63-7-64. Motorcycle or motor scooter crash helmets.

No person shall operate or ride upon any motorcycle or motor scooter upon the public roads or highways of this state unless such person is wearing on his or her head a crash helmet that complies with minimum guidelines established by the National Highway Traffic Safety Administration pursuant to federal Motor Vehicle Safety Standard No. 218 (49 CFR 571.218). Violation of this section shall be deemed a violation of the traffic regulations and rules of the road and punishable as provided by Section 63-9-11. This section shall not apply to a person operating an autocycle as defined in Section 63-3-103 or persons riding any motorcycle or motor scooter in a parade, at a speed not to exceed thirty (30) miles per hour, if the person is eighteen (18) years of age or older.

HISTORY: Laws, 1974, ch. 461; Laws, 2012, ch. 544, § 1; Laws, 2015, ch. 406, § 2, eff from and after July 1, 2015.

Editor's Notes — Laws of 2012, ch. 544, § 4 provides:

"SECTION 4. Section 2 of this act shall take effect and be in force from and after July 1, 2012, and the remainder of this act shall take effect and be in force from and after its passage."

OPINIONS OF THE ATTORNEY GENERAL

Even though the phrase "of the type and design inspected and approved by the American Association of Motor Vehicle Administrators" in § 63-7-64 can no longer be enforced, the requirement of a helmet survives. Younger, Sept. 9, 2002, A.G. Op. #02-0467.

RESEARCH REFERENCES

ALR.

Failure of motorcyclist to wear protective helmet or other safety equipment as contributory negligence, assumption of risk, or failure to avoid consequences of accident. 40 A.L.R.3d 856.

Motor scooter as within policy provisions relating to automobiles or motorcycles. 43 A.L.R.3d 1400.

Motorcyclist's failure to wear helmet or other protective equipment as affecting recovery for personal injury or death. 85 A.L.R.4th 365.

Validity of traffic regulations requiring motorcyclists to wear helmets or other protective gear. 72 A.L.R.5th 607.

§ 63-7-65. Horns and other warning devices.

(1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet. The driver of a motor vehicle shall, when reasonably necessary to ensure safe operation, give audible warning with his horn but shall not otherwise use such horn upon a highway. No horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle.

(2) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by the department. No such siren shall be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound such siren when necessary to warn pedestrians and other drivers of the approach thereof.

(3) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section. No bicycle shall be equipped with nor shall any person use upon a bicycle any siren or whistle.

(4) Any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

HISTORY: Codes, 1942, § 8250; Laws, 1938, ch. 200; Laws, 1994, ch. 324, § 1, eff from and after July 1, 1994.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (1) by substituting "ensure" for "insure." The Joint Committee ratified the correction at its August 10, 2022, meeting.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury instructions.
3. Questions for jury.
4.-10. [Reserved for future use.]
11. Under former law.

1. In general.

Directed verdict was properly entered in favor of a driver in a wrongful death case because speeding was insufficient to show liability since it was not the cause of an accident with a lawnmower, there was no duty to blow a horn under Miss. Code Ann. § 63-7-65(1) for a sudden action, and she used due care in passing and giving the lawnmower space. Lias v. Flowers, 955 So. 2d 337, 2006 Miss. App. LEXIS 608 (Miss. Ct. App. 2006), writ denied, 956 So. 2d 228, 2007 Miss. LEXIS 212 (Miss. 2007).

Minor who enters upon an adult activity such as the operation of a motor vehicle must exercise a commensurate degree of responsibility, and will be held to adult standard in determining whether their conduct while engaging in such adult activity is negligent. Davis v. Waterman, 420 So. 2d 1063, 1982 Miss. LEXIS 2232 (Miss. 1982).

In a wrongful death action arising out of defendant's automobile colliding with a bicycle ridden by a nine-year-old child upon the highway, the jury's verdict for defendant was against the overwhelming weight of the evidence where it appeared that the road in the vicinity of the accident was straight and defendant's view was entirely unobstructed, and defendant testified that he had seen the boy for a distance of several hundred feet before overtaking him, and yet had not sounded his horn nor applied his brakes until he was within 12 or 15 feet of the boy, when it was too late to avoid hitting him. Moak v. Black, 230 Miss. 337, 92 So. 2d 845, 1957 Miss. LEXIS 376 (Miss. 1957).

In an action for injury sustained when plaintiff's coal truck struck defendant's pick-up truck which was making a left turn in front of plaintiff's vehicle to enter an intersecting county road, even if plaintiff was contributorily negligent in driving at an excessive speed while visibility was poor, and failing to blow his horn, and in failing to slow down as he approached the intersection, under Code 1942, § 1454, he was not barred from recovery, although the amount of damages which he might otherwise have been entitled to recover would be diminished in proportion to the amount of negligence, if any, attributable to him. Cobb v. Williams, 228 Miss. 807, 90 So. 2d 17, 1956 Miss. LEXIS 568 (Miss. 1956).

2. Jury instructions.

In an action for injuries sustained in a collision which occurred when the defendant motorist was attempting to overtake the plaintiff motorcyclist, an instruction that if the defendant had a right to pass the plaintiff, and he was not speeding, he was not required by law to blow his horn unless the plaintiff was at the time giving a signal indicating his intention to turn from a straight path of travel, was erroneous, where it was undisputed that at the time the defendant attempted to overtake the plaintiff the motorcycle was rapidly slowing down, since such activity of the motorcyclist would have indicated to a reasonable and prudent man situated in a following vehicle traveling at a rapid rate of speed that it was reasonably necessary to ensure safe operation to give audible warning with his horn. McHale v. Daniel, 233 So. 2d 764, 1970 Miss. LEXIS 1666 (Miss. 1970).

Instruction to the effect that constable in pursuit of reckless driver, sounding his siren, was entitled to assume that other drivers would yield right of way, held, in view of other instructions on proximate cause and duty to have regard to safety of others, no error. Johnson v. Richardson, 234 Miss. 849, 108 So. 2d 194, 1959 Miss. LEXIS 559 (Miss. 1959).

There being no statute imposing a duty upon the driver of an overtaking vehicle the absolute duty of sounding an audible signal before passing without regard to whether the sounding of the signal is reasonably necessary to ensure safe operation, an instruction that such was the law constituted reversible error where the proof was uncontradicted that the driver of the overtaking vehicle in which plaintiff was riding, did not sound his horn before attempting to pass defendant's vehicle, since it in effect peremptorily instructed the jury that the driver of the overtaking vehicle was guilty of negligence. Clark v. Mask, 232 Miss. 65, 98 So. 2d 467, 1957 Miss. LEXIS 445 (Miss. 1957).

The court erred in instructing that if a nine-year-old boy, riding a bicycle on the highway, was aware of the approach of the defendant's automobile, or that the actions of the boy while riding on the highway were such that reasonably led the defendant to believe that the child had noticed and was fully aware of the approach of his automobile, the defendant was under no legal duty to sound his horn and continue sounding his horn at short and frequent intervals when approaching the child, where there was no showing which warranted a finding that the boy was aware of the approach of the automobile prior to the time the defendant had sounded his horn when he was only 12 or 15 feet from the child. Moak v. Black, 230 Miss. 337, 92 So. 2d 845, 1957 Miss. LEXIS 376 (Miss. 1957).

3. Questions for jury.

The question of whether it was negligence on the part of a motorist, when engaged in attempting to pass another vehicle on its right on a four-lane highway, to fail to sound his horn or give a passing signal was properly submitted to the jury. Carona v. Pioneer Life Ins. Co., 357 F.2d 477, 1966 U.S. App. LEXIS 7261 (5th Cir. Miss. 1966).

4.-10. [Reserved for future use.]

11. Under former law.

Ordinance requiring motorist to signal when passing other vehicles traveling in same direction required use of available sound signal customarily used. Somerville v. Keeler, 165 Miss. 244, 145 So. 721, 1933 Miss. LEXIS 274 (Miss. 1933).

OPINIONS OF THE ATTORNEY GENERAL

The definition of "authorized emergency vehicle" does not include the private vehicle of a volunteer fireman, and therefore, such a vehicle may not be equipped with a siren, whistle, or bell as allowed by Section 63-7-65. Baker, November 20, 1998, A.G. Op. #98-0702.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 200.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 591.1 (complaint arising out of intersection collision with police vehicle with flashing lights and siren activated), 2018.

10 Am. Jur. Proof of Facts 3d 203, Negligent Operation of Emergency Vehicle.

11 Am. Jur. Proof of Facts 3d 395, Negligence of Motorist in Accident Involving Bicyclist.

11 Am. Jur. Proof of Facts 3d 503, Motor Vehicle Accident – Contributory Negligence by Bicyclist.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

60A C.J.S., Motor Vehicles §§ 621-623, 668-670.

§ 63-7-67. Tires.

Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberances of any material other than rubber which projects beyond the tread of the traction surface of the tire. However, it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

The Mississippi Department of Transportation and local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this title.

HISTORY: Codes, 1942, § 8254; Laws, 1938, ch. 200; Laws, 2001, ch. 596, § 63, eff from and after July 1, 2001.

RESEARCH REFERENCES

ALR.

Liability of motor vehicle owner or operator for accident occasioned by blowout or other failure of tire. 24 A.L.R.2d 161.

Products liability: liability for injury or death allegedly caused by defective tires. 81 A.L.R.3d 318.

Liability for injury or damage caused by snowplowing or snow removal operations and equipment. 83 A.L.R.4th 5.

Products liability: Manufacturer's post-sale obligation to modify, repair, or recall product. 47 A.L.R.5th 395.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 193.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 743.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 371.

3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 995, 1341-1524, 1531-2060.

34 Am. Jur. Trials 603, Defective Tire Litigation.

17 Am. Jur. Proof of Facts 81, Automobile Tire Defects.

39 Am. Jur. Proof of Facts 2d 209, Defective Tire.

5 Am. Jur. Proof of Facts 3d, Meteorological Conditions at a Particular Time and Place, §§ 1 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

60A C.J.S., Motor Vehicles §§ 621-623.

§ 63-7-69. Warning and safety appliances for trucks and buses; requirement; standards.

(1) No person shall operate any truck or bus on any highway outside the limits of any municipality or residential section adjacent thereto between the hours of one half hour after sunset and one half hour before sunrise unless there be carried in such vehicle, ready for use, certain warning and safety appliances such as flares, fusees, flags, reflectors, fire extinguishers, and the like.

(2) The nature of such appliances, methods of their use, and standards of their quality, shall be prescribed by the department with the condition that no appliance shall be prescribed whose quality is below the standards as follows: for fire extinguishers and flares, the standards adopted by the Interstate Commerce Commission; for fusees, the standards adopted by the Bureau of Explosives; for lights and reflectors, the standards adopted by the Society of Automotive Engineers or the Illuminating Engineers Society; and for any other appliance, the standards adopted by a recognized research body in its respective line. The commissioner shall approve any of the appliances mentioned herein when such appliance has been approved by or meets the minimum standards adopted by either the Interstate Commerce Commission, the Bureau of Explosives, the Society of Automotive Engineers, the Illuminating Engineers Society, or any other recognized research body in its respective line, as the case may be.

HISTORY: Codes, 1942, § 8256; Laws, 1938, ch. 200; Laws, 1946, ch. 420, § 11; Laws, 1954, ch. 329; Laws, 1962, ch. 528, eff from and after passage (approved April 25, 1962).

JUDICIAL DECISIONS

1. In general.

In action arising out of collision between vehicle driven by plaintiff's decedent and disabled truck stopped in middle of roadway, plaintiff was not entitled to negligence per se instruction under statute barring operation of trucks during nighttime hours without proper warning devices; although neither stopped truck nor another truck attempting to start it had safety devices, plaintiff failed to establish time component of statute, i.e., whether half hour had passed since sunset at time of accident. Thomas v. McDonald, 667 So. 2d 594, 1995 Miss. LEXIS 588 (Miss. 1995).

In an action for death of defendant's employee from burns caused by an explosion where truck caught fire and the driver caused an explosion by throwing dirt wet with gasoline on the truck, instruction as to the duty of the defendant to equip the truck with fire extinguisher was not erroneous as emphasizing unduly in the minds of jurors the importance of strict observance of the statutory requirement, since there was no proof in the record to show that the lack of fire extinguisher added to the plaintiff's damages. Cornish v. McCoy, 226 Miss. 366, 84 So. 2d 391, 1956 Miss. LEXIS 407 (Miss. 1956).

RESEARCH REFERENCES

ALR.

Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped without flares. 67 A.L.R.2d 12.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 200.

CJS.

60 C.J.S., Motor Vehicles §§ 49, 50.

§ 63-7-71. Warning and safety appliances for trucks and buses; display.

(1) Whenever any motor truck or bus is stopped upon the highway except for the purpose of picking up or discharging passengers, or its lighting equipment is disabled during the period when lighted lamps must be displayed on vehicles and such motor truck or bus cannot immediately be removed from the main traveled portion of a highway outside of a business or residence district, the driver or other person in charge of such vehicle shall cause such flares, fusees, reflectors, or other signals to be lighted or otherwise placed in an operating condition and placed upon the highway, one at a distance of approximately one hundred feet to the rear of the vehicle, one approximately one hundred feet in advance of the vehicle and the third upon the roadway side of the vehicle. However, if the vehicle is transporting inflammables, no flares (pot torches) fusees, oil lanterns, or any signal produced by a flame, may be used, and in lieu of such signals, either (a) three red electric lanterns or flares

and three red cloth flags, or (b) three emergency reflectors and three red cloth flags shall be used.

(2) Whenever any motor truck or bus is stopped upon the highway except for the purpose of picking up or discharging passengers between the hours of one half hour before sunrise and one half hour after sunset, the driver or person in charge of such vehicle shall place upon the highway in a standing position red flags, one at a distance not less than one hundred feet to the rear of the vehicle and one not less than one hundred feet in advance of the vehicle and the third upon the roadway side of the vehicle.

(3) No person shall at any time operate a motor truck transporting explosives as a cargo or part of a cargo upon the highway unless it carries (a) electric lanterns or flares and red cloth flags or (b) red emergency reflectors and red cloth flags as required in Section 63-7-69. Such electric flares, electric lanterns and emergency reflectors must be capable of producing a red light or red reflection and shall be displayed upon the roadway when and as required in this section.

HISTORY: Codes, 1942, § 8256; Laws, 1938, ch. 200; Laws, 1946, ch. 420, § 11; Laws, 1954, ch. 329; Laws, 1962, ch. 528, eff from and after passage (approved April 25, 1962).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction and application.
3. Failure to warn or use safety equipment.
4. Jury instructions.

1. In general.

Violation of § 63-7-71 constitutes negligence; motor vehicle operator has reasonable time to place flares where vehicle is stopped within line of traffic unless emergency which originally created need to stop on highway arises out of negligence of operator. Hauser v. Krupp Steel Producers, 761 F.2d 204, 1985 U.S. App. LEXIS 30019 (5th Cir. Miss. 1985).

2. Construction and application.

This provision is to be construed as requiring a flare to be placed first to the rear of the disabled vehicle, next, to the front, and lastly upon the roadway side. Hankins v. Harvey, 248 Miss. 639, 160 So. 2d 63, 1964 Miss. LEXIS 288 (Miss. 1964).

This statute is a criminal statute and should be strictly construed. Ashe v. Hughes, 219 Miss. 395, 69 So. 2d 210, 1954 Miss. LEXIS 346 (Miss. 1954).

A wrecker is a "truck" within this section [Code 1942, § 8256]. Ashe v. Hughes, 219 Miss. 395, 69 So. 2d 210, 1954 Miss. LEXIS 346 (Miss. 1954).

This section [Code 1942, § 8256] has no application to a wrecker which was engaged in its normal use on a highway and was in no sense disabled. Ashe v. Hughes, 219 Miss. 395, 69 So. 2d 210, 1954 Miss. LEXIS 346 (Miss. 1954).

3. Failure to warn or use safety equipment.

In view of fact that it was uncontroverted that disabled truck with which plaintiff's decedent collided had no lights and was not equipped with reflectors or other warning devices, plaintiff was entitled to negligence per se instruction under statute imposing duty on operators of disabled trucks to provide warning within reasonable time. Thomas v. McDonald, 667 So. 2d 594, 1995 Miss. LEXIS 588 (Miss. 1995).

Statutory duty imposed on operators of trucks stopped in travelled portion of roadway to display proper warning devices is triggered when truck cannot be immediately removed from roadway, even though operator has reasonable time within which to display devices. Thomas v. McDonald, 667 So. 2d 594, 1995 Miss. LEXIS 588 (Miss. 1995).

Where a truck driver stopped on interstate highway to aid a disabled motorist, § 63-7-71 required the truck driver to put in place, with reasonable promptness, reflectors or other signals designed to warn approaching vehicles. Stong v. Freeman Truck Line, Inc., 456 So. 2d 698, 1984 Miss. LEXIS 1812 (Miss. 1984).

Truck driver's violation of this statute was negligence per se where, after his truck became disabled on a highway outside a business or residential district, he placed two reflectors within fifty feet of his vehicle and, instead of placing the third reflector on the roadway side, placed it by the rear of the truck away from the road. Aetna Casualty & Surety Co. v. Condict, 417 F. Supp. 63, 1976 U.S. Dist. LEXIS 15305 (S.D. Miss. 1976).

The contention that an emergency situation created when the driver of a tractor-trailer was stopped in such a position that the rig blocked both lanes of a two-lane highway while attempting a U-turn did not permit sufficient time for the placing of flares as required by this section [Code 1942, § 8256] was not tenable, for it was the driver's original negligence in attempting an illegal maneuver which created the emergency. Anderson v. Eagle Motor Lines, Inc., 423 F.2d 81, 1970 U.S. App. LEXIS 10685 (5th Cir. Miss. 1970).

Where defendant's truck became partially disabled because of water damage to engine and was proceeding slowly ahead of plaintiff's automobile, which was struck in the rear by an overtaking truck, and the forward movement of defendant's truck was halted for very brief intervals, the defendant was not guilty of negligence per se in not putting out flares or warnings so required by this section [Code 1942, § 8256]. Fant v. Commercial Carriers, Inc., 210 Miss. 474, 49 So. 2d 887, 1951 Miss. LEXIS 284 (Miss. 1951).

4. Jury instructions.

Jury instruction in a wrongful death action resulting from a motor vehicle accident contained inconsistent and incorrect statements of the law regarding the statute; the first paragraph of the instruction, which appeared to be a statement of the law, made it possible for the jury to impose liability without considering the reasonableness of an employee's actions in parking a trailer under the circumstances. Dooley v. Byrd (In re Dooley), 64 So. 3d 951, 2011 Miss. LEXIS 297 (Miss. 2011).

In an action for personal injuries resulting from a collision between defendants' truck and plaintiff's automobile, where the undisputed testimony showed that a part of the truck trailer was left extending into the highway and that the driver failed to place reflectors on the highway as required by this section [Code 1972, § 63-7-71], the plaintiff was entitled to Instruction No. 8 to the effect that the conduct of the truck driver constituted negligence. Powers v. Malley, 302 So. 2d 262, 1974 Miss. LEXIS 1417 (Miss. 1974).

This section [Code 1942, § 8256] has no application to a wrecker which was engaged in its normal use on a highway and was in no sense disabled and where the court gave instruction to the contrary, in an action against owners of wrecker for damages sustained when plaintiff's automobile at night crashed into the rear end of a disabled automobile which wrecker was engaged in rescuing, this instruction was in error. Ashe v. Hughes, 219 Miss. 395, 69 So. 2d 210, 1954 Miss. LEXIS 346 (Miss. 1954).

In an action for personal injuries where the plaintiff's car ran into the defendant's truck parked on the highway without any flares or fusees or other signals on the highway to the rear of the truck, the court did not err in giving instruction that the failure of defendant to place flares, fusees and other signals on the highway to the rear of the truck, was contrary to the law of the state of Mississippi and defendant was negligent. Planters Wholesale Grocery v. Kincade, 210 Miss. 712, 50 So. 2d 578, 1951 Miss. LEXIS 309 (Miss. 1951).

RESEARCH REFERENCES

ALR.
Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped without flares. 67 A.L.R.2d 12.

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 200.
8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 916-920.
3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 347-356.
3A Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 972-976, 1341-1524, 1531-2060.

CJS.
60 C.J.S., Motor Vehicles §§ 49, 50.
60A C.J.S., Motor Vehicles §§ 776, 777.

§ 63-7-73. Protectors or flaps for rear wheels.

(1) No person shall drive or operate or cause to be driven or operated, upon the public highways, streets, bridges and culverts within the State of Mississippi, or any subdivision thereof, any car, truck, truck-tractor, trailer or semi-trailer or bus used for the transportation of property or persons the gross weight of which, including load, exceeds ten tons unless such motor vehicle is equipped with suitable metal protectors or substantial flexible flaps on the rear-most wheels of such vehicle or combination of vehicles, so as to prevent as far as possible such wheels from throwing dirt, water and other materials on the windshields of following motor vehicles. However, pole trailers, dump trucks, and all trucks carrying an "F" license tag shall be exempt from the provisions of this section.

(2) Such protectors or flaps shall be constructed of substantial and suitable materials approved by the commissioner of public safety and shall have a ground clearance of not more than one-fifth of the distance from the center of the rear-most axle to the center of the flaps under any conditions of loading operation of the motor vehicle. They shall be at least as wide as the tires they are protecting. However, if the motor vehicle is so designed and constructed that the purposes of this section cannot be met, then, in the discretion of the commissioner of public safety, no such protectors or flaps shall be required. If the said rear-most wheels are not adequately covered at the top by fenders, body or other parts of the vehicle, the said protectors or flaps shall be extended to a point directly above the rear-most axle. Lamps or wiring shall not be attached to protectors or flaps, and any reflectors or reflectorized material attached to or made a part of the protectors or flaps shall be in addition to the reflectors required by law on the vehicle.

(3) The commissioner of public safety is hereby charged with the duty of administering the provisions of this section.

(4) Any person convicted for a violation of any of the provisions of this section shall for the first violation thereof be punished by a fine of not more than twenty-five dollars ($25.00) or by imprisonment for not more than ten (10) days; for a second conviction such person shall be punished by a fine of not more than one hundred dollars ($100.00) or by imprisonment for not more than twenty (20) days.

HISTORY: Codes, 1942, § 8256.5; Laws, 1954, ch. 338, §§ 1-4, eff July 1, 1954.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 202.

CJS.
60 C.J.S., Motor Vehicles §§ 49, 50.

§ 63-7-75. Speedometers.

All motor vehicles operating on the public highways of this state, carrying passengers for hire, shall be equipped at all times with a speedometer, in good workable condition, reflecting the correct speed, with a dial sufficiently large to be read by the passengers on the said motor vehicle.

HISTORY: Codes, 1942, § 8176; Laws, 1938, ch. 200; Laws, 1948, ch. 328, § 1; Laws, 1962, ch. 524; Laws, 1966, ch. 571, § 1; Laws, 1970, ch. 442, § 1, eff from and after passage (approved April 1, 1970).

§ 63-7-77. Vehicles transporting explosives.

Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "danger" in white letters six inches high.

(b) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The commissioner is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highways as he shall deem advisable for the protection of the public.

HISTORY: Codes, 1942, § 8257; Laws, 1938, ch. 200.

RESEARCH REFERENCES

ALR.
Liability in connection with fire or explosion of explosives while being stored or transported. 35 A.L.R.3d 1177.

§ 63-7-79. Color of used school buses operated on highways for other than school purposes.

(1) Any person who owns or operates a used school bus for the purpose of transportation or use of any kind on the public roads and highways of the State of Mississippi, other than for school purposes, shall change the color of such bus from the regular school bus color of yellow or national school bus chrome to a color in contrast to this color before such bus can be used or operated on the highways or public roads in Mississippi.

(2) The vendor or owner of any school bus shall inform the purchaser in writing at or prior to the time of the sale of any bus not to be used for school purposes as to the requirements of this section.

(3) Any person who shall violate the provisions of this section shall, upon conviction thereof, be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).

HISTORY: Codes, 1942, § 8071.5; Laws, 1962, ch. 379, §§ 1-4, eff from and after passage (approved March 28, 1962).

Cross References — Identification markings of publicly-owned school buses, see § 37-41-43.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

§ 63-7-81. Effect of chapter on right to recover damages in civil actions.

Nothing in this chapter shall be so construed as to curtail or abridge the right of any person to prosecute a civil suit for damages by reason of injuries to person or property resulting from the negligent use of the highways by any motor vehicle, or its owner, or his employee or agent.

HISTORY: Codes, Hemingway's 1917, § 5785; 1930, § 5588; 1942, § 1742; Laws, 1916, ch. 116.

§ 63-7-83. Covering of open top vehicles carrying sand, dirt, gravel or rock.

Every truck, trailer or other carrier with an open top, while traveling upon any state, United States or interstate highway in the State of Mississippi and while carrying any load of sand, dirt, gravel or rock shall be equipped with a tarpaulin, canvas or other such top and same to be secured over the top of any load of sand, dirt, gravel, or rock.

HISTORY: Laws, 1974, ch. 521, § 1, eff from and after July 1, 1974.

Cross References — Trucks or other vehicles to be covered when hauling solid waste, see §§ 17-17-11 and 17-17-29.

Prohibition against spilling loads on highways, see § 63-5-55.

Penalty for littering highways and private property with trash or substance likely to cause fire, see § 97-15-29.

RESEARCH REFERENCES

ALR.

Liability for injury or damage from stone or other object on surface of highway thrown by passing vehicle. 56 A.L.R.2d 1392.

Applicability of res ipsa loquitur doctrine where objects being transported fall from motor vehicle. 66 A.L.R.2d 1255.

§ 63-7-85. Use of sideboards on open top vehicles carrying sand, dirt, gravel or rock.

In lieu of the tarpaulin provided in Section 63-7-83, a truck, trailer or other carrier with an open top while traveling upon any state, United States or interstate highway in the State of Mississippi and while carrying any load of sand, dirt, gravel or rock shall be in full compliance with Sections 63-7-83 through 63-7-89 provided same is not loaded within six (6) inches of the top of the bed or is equipped with four (4) six-inch (6″) sideboards, which sideboards shall be attached one (1) each to the front, back and two (2) sides of the carrier body, and shall remain lowered while the body is being loaded, provided that no part of the load shall extend above the body of the carrier. After loading, the sideboards shall be raised and secured to remain raised during travel, and the space between the top of the sideboards and the top of the load making contact with the sideboards shall not be less than six (6) inches.

HISTORY: Laws, 1974, ch. 521, § 2, eff from and after July 1, 1974.

Cross References — Trucks or other vehicles to be covered when hauling solid waste, see §§ 17-17-11 and 17-17-29.

Penalty for littering highways and private property with trash or substance likely to cause fire, see § 97-15-29.

§ 63-7-87. Enforcement of §§ 63-7-83 and 63-7-85.

The State Tax Commission, Mississippi Highway Patrol and other law enforcement agencies are hereby charged with enforcement of Sections 63-7-83 through 63-7-89.

HISTORY: Laws, 1974, ch. 521, § 3; Laws, 2001, ch. 596, § 64, eff from and after July 1, 2001.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 63-7-89. Penalties for violations of §§ 63-7-83 and 67-3-85.

Any person, firm or corporation operating a truck, trailer or other carrier on any state, United States or interstate highway not properly covered as set forth in Section 63-7-83 or without sideboards as set forth in Section 63-7-85 or in violation of any of the other provisions of said Section 63-7-85 shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00) for each separate and distinct violation.

HISTORY: Laws, 1974, ch. 521, § 4, eff from and after July 1, 1974.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

§ 63-7-91. Slow-moving vehicle safety emblem; requirement.

When any vehicle, whether pulled, towed, self-propelled or animal-drawn, which is not under ordinary circumstances moved, operated or driven at a speed in excess of twenty-five (25) miles per hour, is moved, operated or driven on any public highway or city street which is open for vehicular travel, it shall display a triangular slow-moving-vehicle emblem or high intensity reflectorized tape mounted as near as practicable to the center of the mass and at an approximate height of not less than two (2) nor more than six (6) feet from level ground or pavement surface. In any event, the emblem or tape shall be mounted so as to be entirely visible from the rear, day or night; and the emblem or tape and its position of mounting on the vehicle shall meet the specifications established by rules and regulations properly adopted and promulgated by the Commissioner of Public Safety. Except in cases of emergency, vehicles subject to the provisions of this section that display the reflectorized tape shall not be operated upon any highway on the designated state highway system during the period from sunset to sunrise.

HISTORY: Laws, 1975, ch. 346, § 1; Laws, 1999, ch. 592, § 1, eff from and after July 1, 1999.

JUDICIAL DECISIONS

1. Applicability.

Trial court erred by granting appellee driver summary judgment in appellant driver's negligence action for a highway accident on the ground that appellant's operation of the tractor was negligent per se because it was clear that the tractor was equipped with a triangular reflector, not reflectorized tape, and therefore was not prohibited under Miss. Code Ann. § 63-7-91 from operating on the highway after sunset. Jamison v. Barnes, 8 So. 3d 238, 2008 Miss. App. LEXIS 671 (Miss. Ct. App. 2008), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 210 (Miss. 2009).

§ 63-7-93. Slow-moving vehicle safety emblem; prohibition.

The use of the slow-moving-vehicle emblem or high intensity reflectorized tape shall be restricted to the slow-moving vehicles specified in Section 63-7-91 and the use of such emblem or tape on any other type of vehicle or stationary object on or along any public highway or city street is prohibited.

HISTORY: Laws, 1975, ch. 346, § 2; Laws, 1999, ch. 592, § 2, eff from and after July 1, 1999.

§ 63-7-95. Slow-moving vehicle safety emblem; rules and regulations.

The Commissioner of Public Safety is hereby authorized, empowered and directed to adopt and promulgate rules and regulations establishing standards and specifications for the design, materials and mounting of a standard slow-moving-vehicle emblem and high intensity reflectorized tape for the uniform identification of slow-moving vehicles. In adopting said rules and regulations the Commissioner of Public Safety shall consider the standard markings used in other states, the current recommendations of the American Society of Agricultural Engineers and the Society of Automotive Engineers, in order that the slow-moving-vehicle emblem or tape may be more universally recognizable and of adequate quality.

HISTORY: Laws, 1975, ch. 346, § 3; Laws, 1999, ch. 592, § 3, eff from and after July 1, 1999.

§ 63-7-97. Slow-moving vehicle safety emblem; relationship with other requirements as to lighting and safety equipment.

Nothing in Sections 63-7-91 through 63-7-101 shall be construed to relieve the owner and/or operator of the vehicles identified in Section 63-7-91 from complying with all other requirements for lighting and safety equipment on these vehicles.

HISTORY: Laws, 1975, ch. 346, § 4, eff from and after July 1, 1975.

Cross References — Lighting and safety equipment of motor vehicles generally, see §§ 63-7-1 et seq.

§ 63-7-99. Slow-moving vehicle safety emblem; presumption as to use of reasonable care in operation of vehicle.

Compliance with Section 63-7-91 shall not create a prima facie case or presumption that such owner or operator of the vehicle used reasonable and ordinary care in the operation of such vehicle under the circumstances then existing by the use or display of such slow-moving-vehicle emblem or high intensity reflectorized tape.

HISTORY: Laws, 1975, ch. 346, § 5; Laws, 1999, ch. 592, § 4, eff from and after July 1, 1999.

§ 63-7-101. Slow-moving vehicle safety emblem; enforcement of provisions.

Sections 63-7-91 through 63-7-101 are hereby made a part of the Uniform

Highway Traffic Regulation Law as amended, and their enforcement shall be as provided by said law.

HISTORY: Laws, 1975, ch. 346, § 6, eff from and after July 1, 1975.

§ 63-7-103. Trooper Steve Hood Act: The Nitrous Oxide Prohibition Act; use of nitrous oxide in motor vehicle or motorcycle driven on streets or highways prohibited; penalties.

(1) This section shall be known and may be cited as the "Trooper Steve Hood Act: The Nitrous Oxide Prohibition Act."

(2) For the purposes of this section:

(a) "Motor vehicle" has the meaning ascribed in Section 27-19-3; however, the term "motor vehicle" does not include any vehicle with a gross vehicle or combination weight greater than ten thousand (10,000) pounds.

(b) "Motorcycle" has the meaning ascribed in Section 27-19-3.

(c) "Nitrous oxide" means a gas or liquid form of nitrous oxide that is used to increase the speed or performance of a motor vehicle or motorcycle.

(d) "Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(3)(a)(i) A person shall not operate on a street or highway a motor vehicle or motorcycle that is equipped to supply the engine with nitrous oxide unless the nitrous oxide supply system is made inoperative by means of disconnecting the nitrous oxide feed line from the engine or removing the nitrous oxide canister from the motor vehicle or motorcycle.

(ii) No fine or imprisonment shall be imposed against the operator for a violation of this section, unless at the time the operator was charged with a violation of this section he also was charged with some other offense under Title 63, Mississippi Code of 1972, and he is convicted of both offenses.

(b) A person convicted for the first offense of violating this subsection shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), imprisoned for not more than forty-eight (48) hours, or both.

(c) For a second conviction of any person violating this subsection, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year, and shall be sentenced to community service work for not less than ten (10) days nor more than one (1) year.

(d)(i) For a third or subsequent conviction of any person violating this subsection, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand

Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; however, for any such offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail at the discretion of the circuit court judge.

(ii) After a conviction under this subsection and upon receipt of the court abstract, the Commissioner of Public Safety shall suspend the driver's license and driving privileges of the person for not less than five (5) years.

(iii) After a conviction under this subsection, the law enforcement agency shall seize the vehicle owned by any person convicted of a third or subsequent violation of this subsection, if the convicted person was driving the vehicle at the time the offense was committed. The vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53.

HISTORY: Laws, 2010, ch. 457, § 1, eff from and after July 1, 2010.

Editor's Notes — Sections 63-11-49 through 63-11-53, referred to in (3)(d)(iii), were repealed by Laws of 2016, ch. 503, §§ 10 through 12, effective from and after October 1, 2016.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

TAMPERING WITH OR ALTERATION OF ODOMETERS

Sec.

63-7-201. Definitions.
63-7-203. Offenses.
63-7-205. Warranty relating to odometer mileage.
63-7-207. Service, repair or replacement of odometer.
63-7-209. Penalties.

§ 63-7-201. Definitions.

As used in Sections 63-7-201 through 63-7-209:

(1) The term "dealer" means any person who has sold five (5) or more motor vehicles in the past twelve (12) months to purchasers who in good faith purchased such vehicles for purposes other than resale.

(2) The term "distributor" means any person who has sold five (5) or more motor vehicles in the past twelve (12) months for resale.

(3) The term "odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

(4) The term "repair and replacement" means to restore to a sound working condition by replacing the odometer or any part thereof or by correcting what is inoperative.

HISTORY: Laws, 1979, ch. 489, § 1, eff from and after July 1, 1979.

RESEARCH REFERENCES

Practice References.
Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

§ 63-7-203. Offenses.

(1) It shall be unlawful for any person to advertise for sale, to sell, to use, or to install on any part of a motor vehicle or on an odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage driven. For the purposes of this section the true mileage driven is that mileage driven by the car as registered by the odometer within the manufacturer's designed tolerance.

(2) It shall be unlawful for any person with the intent to defraud to operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

(3) It shall be unlawful for any person to disconnect, turn back, reset or alter, or cause to be disconnected, reset or altered, the odometer of any motor vehicle with the intent to reduce the number of miles indicated thereon.

HISTORY: Laws, 1979, ch. 489, §§ 2-4, eff from and after July 1, 1979.

RESEARCH REFERENCES

ALR.
Construction and application of state statute making it unlawful to tamper with motor vehicle odometer. 76 A.L.R.3d 981.

Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer – Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies. 66 A.L.R.6th 351.

Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer – Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute. 67 A.L.R.6th 209.

Validity, construction, and application of odometer requirement provisions of Motor Vehicle Information and Cost Savings Act (15 USCS §§ 1981-1991). 28 A.L.R. Fed. 584.

Am. Jur.
20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 115.1 (complaint, petition, or declaration against automobile dealership and salesperson, misrepresentation in sale of used automobile sold as new automobile, fraudulent concealment of disconnection of odometer).

1 Am. Jur. Proof of Facts 2d 677, Fraudulent Alteration of Odometer.

§ 63-7-205. Warranty relating to odometer mileage.

If a manufacturer, distributor, or dealer of a new motor vehicle makes any warranty to the purchaser of, and with respect to, a new motor vehicle which is based on the amount of miles that the motor vehicle is driven, only those miles which the motor vehicle has been driven on and after the date that the motor vehicle has first been sold as new to the purchaser shall be considered for purposes of the warranty.

The mileage indicated upon the odometer of the motor vehicle on the date that the motor vehicle is first sold as new to the purchaser shall, for the purposes of the warranty, be the mileage upon which the warranty shall commence.

HISTORY: Laws, 1979, ch. 489, § 5, eff from and after July 1, 1979.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 115.1 (complaint, petition, or declaration against automobile dealership and salesperson, misrepresentation in sale of used automobile sold as new automobile, fraudulent concealment of disconnection of odometer).

§ 63-7-207. Service, repair or replacement of odometer.

Nothing in Sections 63-7-201 through 63-7-209 shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Any removal or alteration of such notice so affixed shall be unlawful.

HISTORY: Laws, 1979, ch. 489, § 6, eff from and after July 1, 1979.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 115.1 (complaint, petition, or declaration against automobile dealership and salesperson, misrepresentation in sale of used automobile sold as new automobile, fraudulent concealment of disconnection of odometer).

§ 63-7-209. Penalties.

Violation of the provisions of Sections 63-7-201 through 63-7-209 shall be deemed a misdemeanor and upon conviction shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

HISTORY: Laws, 1979, ch. 489, § 7, eff from and after July 1, 1979.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

CHILD PASSENGER RESTRAINT DEVICES

Sec.	
63-7-301.	Requirement of device or belt positioning booster seat system; failure to provide and use device or belt positioning booster seat system not deemed negligence.
63-7-303.	Duties, rights, liabilities, etc., between parent and child.
63-7-305.	Enforcement.
63-7-307.	Repealed.
63-7-309.	Penalties.
63-7-311.	Notice of requirement for devices.
63-7-313.	Repealed.

§ 63-7-301. Requirement of device or belt positioning booster seat system; failure to provide and use device or belt positioning booster seat system not deemed negligence.

(1)(a) Every person transporting a child under the age of four (4) years in a passenger motor vehicle, and operated on a public roadway, street or highway within this state, shall provide for the protection of the child by properly using a child passenger restraint device or system meeting applicable federal motor vehicle safety standards.

(b) Every person transporting a child in a passenger motor vehicle operated on a public roadway, street or highway within this state, shall provide for the protection of the child by properly using a belt positioning booster seat system meeting applicable federal motor vehicle safety standards if the child is at least four (4) years of age, but less than seven (7) years of age and measures less than four (4) feet nine (9) inches in height or weighs less than sixty-five (65) pounds.

(c) If more than two (2) children who are required under subsection (1) of this section to use a booster seat are being transported in a vehicle at one time, and the vehicle only has two (2) lap and shoulder belts in the rear seat, then only the two (2) children sitting in the seats with the lap and shoulder belts are required to use a belt positioning booster seat system and safety belt, and any other children may be secured with a safety seat lap belt only.

(2) The term "passenger motor vehicle" as used in Sections 63-7-301 through 63-7-311 has the same meaning as defined in Section 63-2-1(2). Sections 63-7-301 through 63-7-311 do not apply to the vehicles described in Section 63-2-1(3).

(3) Failure to provide and use a child passenger restraint device or system or a belt positioning booster seat system shall not be considered contributory or comparative negligence.

HISTORY: Laws, 1983, ch. 400, § 1; Laws, 1994, ch. 325, § 1; Laws, 1998, ch. 501, § 3; Laws, 2008, ch. 520, § 1, eff from and after July 1, 2008.

Cross References — Mandatory use of safety seat belts by operators and front-seat passengers, generally, see § 63-2-1.

Penalties for violation of § 63-7-301, see § 63-7-309.

Rights or liabilities between parent and child from requirement of child passenger restraint devices, see § 63-7-303.

Enforcement of requirement of child passenger restraint devices, see § 63-7-305.

OPINIONS OF THE ATTORNEY GENERAL

Under this section, child care centers and/or Head Start centers are exempt from the child restraint law only if, in fact, the vehicle used in transporting the children is not registered as "private carrier of passengers." Mahan, June 28, 1995, A.G. Op. #95-0283.

A person can be charged with the failure to utilize a child restraint device or seat belt and child abuse without violating the double jeopardy clause. Bishop, Feb. 16, 2001, A.G. Op. #2001-0733.

A violation of subsection (1) is a primary violation that requires no other infraction. Gordon, Sept. 14, 2001, A.G. Op. #01-0573.

RESEARCH REFERENCES

ALR.

Failure to use or misuse of automobile child safety seat or restraint system as affecting recovery for personal injury or death. 46 A.L.R.5th 557.

Liability under state law for injuries resulting from defective automobile seatbelt, shoulder harness, or restraint system. 48 A.L.R.5th 1.

Am. Jur.

21 Am. Jur. Proof of Facts 3d 115, Defective Automobile Child Safety Restraint.

3 Am Law Prod Liab 3d, Contributory Negligence Comparative Fault § 40:19.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

§ 63-7-303. Duties, rights, liabilities, etc., between parent and child.

No provision of Sections 63-7-301 through 63-7-313 shall be construed as creating any duty, standard of care, right or liability between parent and child that is not recognized under the laws of the State of Mississippi as they exist on July 1, 1983, or as they may at any time in the future be constituted by statute or court decision.

HISTORY: Laws, 1983, ch. 400, § 2, eff from and after July 1, 1983.

Editor's Notes — Section 63-7-313 referred to in this section was repealed by Laws of 1990, ch. 358, § 2, effective from and after July 1, 1990.

Cross References — Mandatory use of safety seat belts by operators and front-seat passengers, generally, see § 63-2-1.

RESEARCH REFERENCES

ALR.

Failure to use or misuse of automobile child safety seat or restraint system as affecting recovery for personal injury or death. 46 A.L.R.5th 557.

§ 63-7-305. Enforcement.

The provisions of Section 63-7-301 may be enforced by any duly sworn law enforcement officer of this state, or of any county or political subdivision thereof.

HISTORY: Laws, 1983, ch. 400, § 3, eff from and after July 1, 1983.

Cross References — Mandatory use of safety seat belts by operators and front-seat passengers, generally, see § 63-2-1.

Rights or liabilities between parent and child from requirement of child passenger restraint devices, see § 63-7-303.

§ 63-7-307. Repealed.

Repealed by Laws, 1998, ch. 501, § 4, eff from and after July 1, 1998.

§ 63-7-307. [Laws, 1983, ch. 400, § 4, eff from and after July 1, 1983]

Editor's Notes — Former § 63-7-307 provided for dismissal of proceedings against persons charged with a first offense if proof of acquisition of a child restraint device or system is produced.

§ 63-7-309. Penalties.

Any person convicted of violating the provisions of Section 63-7-301 shall be fined not more than Twenty-five Dollars ($25.00) for each offense.

HISTORY: Laws, 1983, ch. 400, § 5; Laws, 1990, ch. 358, § 1, eff from and after July 1, 1990.

Cross References — Mandatory use of safety seat belts by operators and front-seat passengers, generally, see § 63-2-1.

Rights and liabilities between parent and child from requirement of child passenger restraint devices, see § 63-7-303.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

§ 63-7-311. Notice of requirement for devices.

The state tax commission shall provide notice of the requirement for child restraint devices or systems, which notice shall accompany the delivery of a motor vehicle license tag.

HISTORY: Laws, 1983, ch. 400, § 6, eff from and after July 1, 1983.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Mandatory use of safety seat belts by operators and front-seat passengers, generally, see § 63-2-1.

Rights and liabilities between parent and child from requirement of child passenger restraint devices, see § 63-7-303.

§ 63-7-313. Repealed.

Repealed by Laws, 1990, ch. 358, § 2, eff from and after July 1, 1990.
§ 63-7-313. [Laws, 1983, ch. 400, § 7]

Editor's Notes — Former § 63-7-313 related to applicability of §§ 63-7-301 et seq.

CHAPTER 9.

TRAFFIC VIOLATIONS PROCEDURE

Sec.

63-9-1. Short title.
63-9-3. Construction.
63-9-5. Definitions.
63-9-7. Parties deemed guilty of offenses.
63-9-9. Requiring or permitting operation of vehicle in manner contrary to law.
63-9-11. Penalties for violations of Chapter 3, 5 or 7; exemption.
63-9-12. Payment of fines by personal check; liability for dishonored check.
63-9-13. Disposition of fines and forfeitures for violations of Chapter 3, 5 or 7.
63-9-15. Repealed.
63-9-17. Maintenance of records relating to charged offenses; records and reports of convictions.
63-9-19. Compensation of peace officers for services in traffic violation cases.
63-9-21. Uniform Traffic Ticket Law.
63-9-23. Exclusivity of procedure prescribed in chapter.
63-9-25. Deposit of driver's license in lieu of bail.
63-9-27. Posting of guaranteed arrest bond certificate in lieu of cash bail.
63-9-29. Repealed.
63-9-31. Additional surcharge for traffic violations to fund automation of citations issued by Highway Safety Patrol and wireless radio communications programs; funding of agency expenses; deposit of monies into State General Fund.
63-9-33. Assessment of additional surcharge on traffic violations and vehicular parking or registration offenses by certain municipalities to fund computerized crime prevention measures.
63-9-35. Certain traffic citations issued in other states are prohibited from being placed on a driver's record or reported to insurance.
63-9-37. Recognition of traffic fines resulting from automated recording equipment of another state; suspension of driver's license for failure to pay fine.

§ 63-9-1. Short title.

This chapter may be cited as the Uniform Highway Traffic Regulation Law—Traffic Violations Procedure.

HISTORY: Codes, 1942, § 8126; Laws, 1938, ch. 200.

Cross References — Uniform Highway Traffic Regulation Law – Rules of the Road, see §§ 63-3-1 et seq.

Uniform Highway Traffic Regulation Law – Size, Weight and Load Regulations, see §§ 63-5-1 et seq.

Uniform Highway Traffic Regulation Law – Equipment and Identification Regulations, see §§ 63-7-1 et seq.

Deposit of driver's license in lieu of bail in traffic cases, see § 63-9-25.

RESEARCH REFERENCES

ALR.

Horizontal gaze nystagmus test: use in impaired driving prosecution. 60 A.L.R.4th 1129.

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 954 et seq.

CJS.

61A C.J.S., Motor Vehicles §§ 1504 et seq.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Limpert, Motor Vehicle Accident Reconstruction and Cause Analysis, Fifth Edition (Michie).

Barzelay, Lacy et al., Scientific Automobile Accident Reconstruction (Matthew Bender).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-9-3. Construction.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: Codes, 1942, § 8282; Laws, 1938, ch. 200.

§ 63-9-5. Definitions.

For purposes of this chapter, the meanings ascribed to words and phrases in Article 3 of Chapter 3 of this title shall be fully applicable to this chapter.

HISTORY: Codes, 1942, § 8126; Laws, 1938, ch. 200.

§ 63-9-7. Parties deemed guilty of offenses.

Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of, any act declared in Chapter 3, 5, or 7 of this title, to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense. Every person who falsely, fraudulently, forcibly, or wilfully induces, causes, coerces, requires, permits, or directs another to violate any provision of said chapter is likewise guilty of such offense.

HISTORY: Codes, 1942, § 8277; Laws, 1938, ch. 200.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence by substituting “Chapter 3, 5, or 7” for “Chapters 3, 5, or 7.” The Joint Committee ratified the correction at its August 10, 2022, meeting.

RESEARCH REFERENCES

ALR.

Entrapment to commit traffic offense. 34 A.L.R.4th 1167.

CJS.

61A C.J.S., Motor Vehicles § 1511.

§ 63-9-9. Requiring or permitting operation of vehicle in manner contrary to law.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

HISTORY: Codes, 1942, § 8278; Laws, 1938, ch. 200.

§ 63-9-11. Penalties for violations of Chapter 3, 5 or 7; exemption.

(1) It is a misdemeanor for any person to violate any of the provisions of Chapter 3, 5 or 7 of this title, unless such violation is by such chapters or other law of this state declared to be a felony.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of such chapters for which another penalty is not provided shall for first conviction thereof be punished by a fine of not more than One Hundred Dollars ($100.00) or by imprisonment for not more than ten (10) days; for a second such conviction within one (1) year thereafter such person shall be punished by a fine of not more than Two Hundred Dollars ($200.00) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

(3)(a) Whenever a person not covered under Section 63-1-55 is charged with a misdemeanor violation of any of the provisions of Chapter 3, 5 or 7 of this title, the person shall be eligible to participate in not less than four (4) hours of a traffic safety violator course and thereby have no record of the violation on the person's driving record if the person meets all the following conditions:

(i) The defendant has a valid Mississippi driver's license or permit.

(ii) The defendant has not had a conviction of a violation under Chapter 3, 5 or 7 of this title within three (3) years before the current offense; any conviction entered before October 1, 2002, does not constitute a prior offense for the purposes of this subsection (3).

(iii) The defendant's public and nonpublic driving record as maintained by the Department of Public Safety does not indicate successful completion of a traffic safety violator course under this section in the three-year period before the offense.

(iv) The defendant files an affidavit with the court stating that this is the defendant's first conviction in more than three (3) years or since October 1, 2002, whichever is the lesser period of time; the defendant is not in the process of taking a course under this section; and the defendant has not completed a course under this section that is not yet reflected on the defendant's public or nonpublic driving record.

(v) The offense charged is for a misdemeanor offense under Chapter 3, 5 or 7 of this title.

(vi) The defendant pays the applicable fine, costs and any assessments required by law to be paid upon conviction of such an offense.

(vii) The defendant pays to the court an additional fee of Ten Dollars ($10.00) to elect to proceed under the provisions of this subsection (3).

(b)(i)1. An eligible defendant may enter a plea of nolo contendere or guilty in person or in writing and present to the court, in person or by mail postmarked on or before the appearance date on the citation, an oral or written request to participate in a course under this subsection (3).

2. The court shall withhold acceptance of the plea and defer sentencing in order to allow the eligible defendant ninety (90) days to successfully complete not less than four (4) hours of a court-approved traffic safety violator course at the cost of the defendant. Upon proof of successful completion entered with the court, the court shall dismiss the prosecution and direct that the case be closed. The only record maintained thereafter shall be the nonpublic record required under Section 63-9-17 solely for use by the courts in determining eligibility under this subsection (3).

(ii) If a person pleads not guilty to a misdemeanor offense under any of the provisions of Chapter 3, 5 or 7 of this title but is convicted, and the person meets all the requirements under paragraph (a) of this subsection, upon request of the defendant the court shall suspend the sentence for such offense to allow the defendant forty-five (45) days to successfully complete not less than four (4) hours of a court-approved traffic safety violator course at his own cost. Upon successful completion by the defendant of the course, the court shall set the conviction aside, dismiss the prosecution and direct that the case be closed. The court on its own motion shall expunge the record of the conviction, and the only record maintained thereafter shall be the nonpublic record required under Section 63-9-17 solely for use by the courts in determining an offender's eligibility under this subsection (3).

(c) An out-of-state resident shall be allowed to complete a substantially similar program in his home state, province or country provided the requirements of this subsection (3) are met, except that the necessary valid driver's license or permit shall be one issued by the home jurisdiction.

(d) A court shall not approve a traffic safety violator course under this subsection (3) that does not supply at least four (4) hours of instruction, an instructor's manual setting forth an appropriate curriculum, student workbooks, some scientifically verifiable analysis of the effectiveness of the curriculum and provide minimum qualifications for instructors.

(e) A court shall inform a defendant making inquiry or entering a personal appearance of the provisions of this subsection (3).

(f) The Department of Public Safety shall cause notice of the provisions of this subsection (3) to be available on its official web site.

(g) Failure of a defendant to elect to come under the provisions of this subsection (3) for whatever reason, in and of itself, shall not invalidate a conviction.

(h) No employee of the sentencing court shall personally benefit from a defendant's attendance of a traffic safety violator course. Violation of this prohibition shall result in termination of employment.

(i) The additional fee of Ten Dollars ($10.00) imposed under this subsection (3) shall be forwarded by the court clerk to the State Treasurer for deposit into a special fund created in the State Treasury. Monies in the special fund may be expended by the Department of Public Safety, upon legislative appropriation, to defray the costs incurred by the department in maintaining the nonpublic record of persons who are eligible for participation under the provisions of this subsection (3).

(4) The provisions of subsection (3) of this section shall not be applicable to violation of any of the provisions of Chapter 3, 5 or 7 of this title committed by the holder of a commercial driver's license issued under the Mississippi Commercial Driver's License Law, regardless of whether the violation occurred while operating a commercial motor vehicle or some other motor vehicle.

HISTORY: Codes, 1942, § 8275; Laws, 1938, ch. 200; Laws, 2002, ch. 566, § 1; Laws, 2004, ch. 315, § 1; Laws, 2005, ch. 541, § 6, eff from and after July 1, 2005.

Cross References — Imposition and collection of an assessment in addition to a fine or bail forfeiture for any hazardous moving traffic violation which must be deposited in an emergency medical services operating fund, see § 41-59-61.

Applicability of subsection (3) of this section to defendant who holds commercial driver's license or was operating commercial motor vehicle when violation occurred and who is charged with violating state of local traffic law other than parking violation, see § 63-1-222.

Payment of traffic fines by personal check, see § 63-9-12.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-10. [Reserved for future use.]
11. Under former law.

1. In general.

Insurer setting up violation of various traffic laws by insured as defense to action on policy excepting death in consequence of violation of law, may not be required to prove all the violations charged. Standard Life Ins. Co. v. Hinton, 247 Miss. 838, 157 So. 2d 486, 1963 Miss. LEXIS 361 (Miss. 1963).

This section [Code 1942, § 8275] governs the punishment which may be imposed for violation of Code 1942, § 8176, which pertains to lawful rates of speed. White v. Philadelphia, 197 Miss. 166, 19 So. 2d 493, 1944 Miss. LEXIS 287 (Miss. 1944).

2.-10. [Reserved for future use.]

11. Under former law.

Under an earlier statute containing similar provisions, a sentence of $50 fine and 30 days in jail for first offense was held erroneous. Snipes v. State, 144 Miss. 266, 109 So. 722, 1926 Miss. LEXIS 353 (Miss. 1926).

OPINIONS OF THE ATTORNEY GENERAL

A defendant must inform the court either orally or in writing postmarked on or before the date listed on the citation that he/she plans on attending a traffic safety violator course or he/she becomes ineligible to have the violation removed from his/her record as authorized by this section. Mullen, Oct. 4, 2002, A.G. Op. #02-0573.

A court may supply to a defendant a list of the courses that have been approved by the court and allow the defendant to choose which course to attend from that list. O'Brien, Oct. 18, 2002, A.G. Op. #02-0598.

The affidavit required by this section may be acknowledged by the court clerk or judge or any individual who has the authority to acknowledge an oath. Cruber, Oct. 18, 2002, A.G. Op. #02-0599.

It is the defendant's choice whether he/she will attend the traffic safety violator course, if he/she is eligible; if the court determines that the defendant is not eligible to attend the traffic safety violator course, the court should process the traffic ticket in the normal course of business. Cruber, Oct. 18, 2002, A.G. Op. #02-0599.

Although Sections 63-3-201 and 63-9-11 provide that a violation of the rules of the road is a criminal violation, a city is not prohibited from enacting additional ordinances also making disobedience or disregard of a traffic control signal a civil offense. Mitchell, Dec. 13, 2006, A.G. Op. 06-0170.

Miss. Code Ann. § 63-9-11(3)(d) clearly and unequivocally requires instruction of an approved traffic safety violator course by a human being when it specifies that the course "provide minimum qualifications for instructors." This requirement does not conflict with Miss. Code Ann. § 63-1-55 allowing computerized defensive driving instruction for minors. Dearing, March 2, 2007, A.G. Op. #07-00091, 2007 Miss. AG LEXIS 80.

RESEARCH REFERENCES

ALR.

Automobiles: validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations. 48 A.L.R.4th 367.

§ 63-9-12. Payment of fines by personal check; liability for dishonored check.

Personal checks shall be accepted from Mississippi residents in payment of any fine imposed as a result of a violation of Chapters 3, 5 and 7 of Title 63, Mississippi Code of 1972. The person accepting a check in payment of such a fine shall not be liable if such check is returned not paid provided he makes reasonable efforts to collect the fine.

HISTORY: Laws, 1991, ch. 480, § 1, eff from and after July 1, 1991.

Cross References — Authority of justice court clerk to refuse to accept personal checks, except as provided in this section, see § 9-11-27.

§ 63-9-13. Disposition of fines and forfeitures for violations of Chapter 3, 5 or 7.

All fines and forfeitures collected upon conviction or upon forfeiture of bail of any person charged with a violation of any of the provisions of Chapter 3, 5 or 7 of this title constituting a misdemeanor shall be deposited in the treasury of the county maintaining the court wherein such conviction or forfeiture was had.

HISTORY: Codes, 1942, § 8276; Laws, 1938, ch. 200.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the section by substituting "Chapter 3, 5, or 7" for "Chapters 3, 5, or 7." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Cross References — Imposition and collection of an assessment in addition to fine or bail forfeiture for any hazardous moving traffic violation which must be deposited in an emergency medical services operating fund, see § 41-59-61.

Payment of traffic fines by personal check, see § 63-9-12.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 63-9-15. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 63-9-15. [Codes, 1942, § 8280; Laws, 1938, ch. 200]

Editor's Notes — Former § 63-9-15 related to disposition of fines and forfeitures.

§ 63-9-17. Maintenance of records relating to charged offenses; records and reports of convictions.

(1) Every court shall keep a full record of the proceedings of every case in which a person is charged with any violation of law regulating the operation of vehicles on the highways, streets or roads of this state.

(2) Unless otherwise sooner required by law, within five (5) days after the conviction of a person upon a charge of violating any law regulating the operation of vehicles on the highways, streets or roads of this state, every court in which such conviction was had shall prepare and immediately forward to the Department of Public Safety an abstract of the record of said court covering the case in which said person was so convicted, which abstract must be certified by the person so authorized to prepare the same to be true and correct.

(3) Said abstract must be made upon a form approved by the Department of Public Safety, and shall include the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, and if the fine was satisfied by prepayment or appearance bond forfeiture, and the amount of the fine or forfeiture, as the case may be.

(4) Every court shall also forward a like report to the Department of Public Safety upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

(5) Every court shall also forward a like report to the Department of Public Safety after the satisfactory completion by a defendant of an approved

traffic safety violator course under Section 63-9-11, and the department shall make and maintain a private, nonpublic record to be kept for a period of ten (10) years. The record shall be solely for the use of the courts in determining eligibility under Section 63-9-11, as a first-time offender, and shall not constitute a criminal record for the purpose of private or administrative inquiry. Reports forwarded to the Department of Public Safety under this subsection shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(6) The failure by refusal or neglect of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

(7) The Department of Public Safety shall keep copies of all abstracts received hereunder for a period of three (3) years at its main office and the same shall be open to public inspection during reasonable business hours. This subsection shall not apply to nonpublic records maintained solely for the use of the courts in determining offender eligibility.

HISTORY: Codes, 1942, § 8281; Laws, 1938, ch. 200; Laws, 1985, ch. 363, § 4; Laws, 1990, ch. 351, § 1; Laws, 2002, ch. 566, § 2; Laws, 2004, ch. 315, § 2; Laws, 2005, ch. 541, § 7, eff from and after July 1, 2005.

Cross References — Municipal courts generally, see §§ 21-23-1 et seq.

JUDICIAL DECISIONS

1. In general.

The conduct of a justice court judge warranted his removal from office where, during a 3-year period, he adjudicated approximately 28 driving under the influence cases wherein he did not file an abstract of the court record of convictions with the Commissioner of Public Safety as required by § 63-11-37 and he adjudicated approximately 552 routine traffic convictions but failed to report these to the Department of Public Safety as required by § 63-9-17. In re Quick, 553 So. 2d 522, 1989 Miss. LEXIS 484 (Miss. 1989).

RESEARCH REFERENCES

ALR.

Admissibility of traffic conviction in later state civil trial, 73 A.L.R.4th 691.

§ 63-9-19. Compensation of peace officers for services in traffic violation cases.

The collection of fees for the performance of services in making arrests in traffic violation cases and taking the accused before the court for trial or to jail awaiting trial shall be restricted to that peace officer who performs such services, and, if performed by a highway patrolman, shall not be compensated. No peace officer accompanying a highway patrolman in the performance of such duties shall receive any compensation.

No peace officer shall be compensated for attending court in traffic violation cases wherein a plea of guilty is entered unless said peace officer was the arresting officer.

HISTORY: Codes, 1942, § 8285.7; Laws, 1958, ch. 288.

§ 63-9-21. Uniform Traffic Ticket Law.

(1) This section shall be known as the Uniform Traffic Ticket Law.

(2) All traffic tickets, except traffic tickets filed electronically as provided under subsection (8) of this section, shall be printed in the original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety. All traffic tickets shall be uniform as prescribed by the Commissioner of Public Safety and the Attorney General, except as otherwise provided in subsection (3)(b) and except that the Commissioner of Public Safety and the Attorney General may alter the form and content of traffic tickets to meet the varying requirements of the different law enforcement agencies. The Commissioner of Public Safety and the Attorney General shall prescribe a separate traffic ticket, consistent with the provisions of subsection (3)(b) of this section, to be used exclusively for violations of the Mississippi Implied Consent Law.

(3)(a) Every traffic ticket issued by any sheriff, deputy sheriff, constable, county patrol officer, municipal police officer or State Highway Patrol officer for any violation of traffic or motor vehicle laws shall be issued on the uniform traffic ticket or uniform implied consent violation ticket consisting of an original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety.

(b) The traffic ticket, citation or affidavit issued to a person arrested for a violation of the Mississippi Implied Consent Law shall contain a place for the trial judge hearing the case or accepting the guilty plea, as the case may be, to sign, stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised of his right to have an attorney. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be entered or written on the ticket, citation or affidavit.

(c) Every traffic ticket shall show, among other necessary information, the name of the issuing officer, the name of the court in which the cause is to be heard, and the date and time the person is to appear to answer the charge. The ticket shall include information that will constitute a complaint charging the offense for which the ticket was issued, and when duly sworn to and filed with a court of competent jurisdiction, prosecution may proceed thereunder.

(d) The traffic ticket shall contain a space to include the current address and current telephone number of the person being charged. It shall not contain a space to include the social security number of the person being charged.

(4) All traffic tickets, except traffic tickets filed electronically under subsection (8) of this section, shall be bound in book form, shall be consecu-

tively numbered and each traffic ticket shall be accounted for to the officer issuing such book. The traffic ticket books shall be issued to sheriffs, deputy sheriffs, constables and county patrol officers by the chancery clerk of their respective counties, to each municipal police officer by the clerk of the municipal court, and to each State Highway Patrol officer by the Commissioner of Public Safety.

(5) The chancery clerk, clerk of the municipal court and the Commissioner of Public Safety shall keep a record of all traffic ticket books issued and to whom issued, accounting for all books printed and issued. All traffic tickets submitted electronically shall be filed automatically with the Commissioner of Public Safety and either the clerk of the municipal court or clerk of the justice court using the system of electronic submission for the purpose of maintaining a record of account as prescribed by this subsection (5).

(6) The original traffic ticket, unless the traffic ticket is filed electronically as provided under subsection (8) of this section, shall be delivered by the officer issuing the traffic ticket to the clerk of the court to which it is returnable to be retained in that court's records and the number noted on the docket. However, if a ticket is issued and the person is incarcerated based upon the conduct for which the ticket was issued, the ticket shall be filed with the clerk of the court to which it is returnable no later than 5:00 p.m. on the next business day, excluding weekends and holidays, after the date and time of the person's incarceration; however, failure to timely file the traffic ticket shall not be grounds for dismissal of the traffic ticket and shall not prevent the person's release from incarceration. The officer issuing the traffic ticket shall also give the accused a copy of the traffic ticket. The clerk of the court shall file a copy with the Commissioner of Public Safety within forty-five (45) days after judgment is rendered showing such information about the judgment as may be required by the commissioner or, in cases in which no judgment has been rendered, within one hundred twenty (120) days after issuance of the ticket. Other copies that are prescribed by the commissioner pursuant to this section shall be filed or retained as may be designated by the commissioner. All copies shall be retained for at least two (2) years.

(7) Failure to comply with the provisions of this section shall constitute a misdemeanor and, upon conviction, shall be punishable by a fine of not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00).

(8)(a) Law enforcement officers and agencies may file traffic tickets, including tickets issued for a violation of the Mississippi Implied Consent Law and general misdemeanor affidavits, by computer or electronic means if the ticket or affidavit conforms in all substantive respects, including layout and content, as provided under subsections (2) or (3)(b) of this section. The provisions of subsection (4) of this section requiring tickets bound in book form do not apply to a ticket that is produced by computer or electronic means. Information concerning tickets produced by computer or electronic means shall be available for public inspection in substantially the same manner as provided for the uniform tickets described in subsection (2) of this section.

(b) The defendant shall be provided with a paper copy of the ticket. A law enforcement officer who files a ticket or misdemeanor affidavit electronically shall be considered to have certified, signed and sworn to the ticket or misdemeanor affidavit and has the same rights, responsibilities and liabilities as with all other tickets or affidavits issued pursuant to this section.

HISTORY: Codes, 1942, § 8285.5; Laws, 1958, ch. 260, §§ 1-7; Laws, 1982, ch. 423, § 13; Laws, 1982, ch. 464; Laws, 1984, ch. 352; Laws, 1985, ch. 363, § 3; Laws, 1991, ch. 480, § 3; Laws, 2003, ch. 550, § 1; Laws, 2009, ch. 376, § 1; Laws, 2009, ch. 481, § 1; Laws, 2009, ch. 566, § 1; Laws, 2011, ch. 342, § 1; Laws, 2012, ch. 464, § 1; Laws, 2012, ch. 550, § 1; Laws, 2013, ch. 472, § 1; Laws, 2016, ch. 504, § 1, eff from and after passage (approved May 13, 2016).

Joint Legislative Committee Note — Section 1 of ch. 376, Laws of 2009, effective from and after passage (approved March 17, 2009), amended this section and Section 1 of ch. 481 Laws of 2009, effective from and after July 1, 2009 (approved April 2, 2009), also amended this section. Section 1 of ch. 566, Laws of 2009, effective from and after passage (approved May 13, 2009), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 566, Laws of 2009, pursuant to its own terms, which contain language that specifically provides that it supersedes the amendments made by ch. 376, § 1, and ch. 481, § 1.

Section 1 of Chapter 550, Laws of 2012, effective July 1, 2012 (approved May 22, 2012), amended this section. Section 1 of Chapter 464, Laws of 2012, effective July 1, 2012 (approved April 23, 2012), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 550, Laws of 2012, which contains language that specifically provides that it supersedes § 63-9-21 as amended by Laws of 2012, ch.464.

Cross References — Duties of constables generally, see § 19-19-5.

Sheriffs generally, see §§ 19-25-1 et seq.

Highway safety patrol, generally, see § 45-3-21.

County patrol officers generally, see §§ 45-7-1 et seq.

Deposit of driver's license in lieu of bail in traffic cases, see § 63-9-25.

Mississippi Implied Consent Law, see §§ 63-11-1 et seq.

Traffic ticket, citation or affidavit issued for a violation of Implied Consent Law to conform to requirements of this section, see § 63-11-5.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Town provided defendant with charging instruments because the two traffic tickets a police officer issued to defendant met the requirements established by the statute; in addition, the town supplemented its discovery disclosures and explicitly informed defendant that he was charged with operating a motor vehicle without a valid driver's license and failing to maintain or provide proof of insurance. Caissie v. State, 254 So. 3d 849, 2018 Miss. App. LEXIS 110 (Miss. Ct. App. 2018), cert. denied, 254 So. 3d 170, 2018 Miss. LEXIS 410 (Miss. 2018), cert. denied, — U.S. —, 140 S. Ct. 100, 205 L. Ed. 2d 36, 2019 U.S. LEXIS 4809 (U.S. 2019).

Traffic citation issued to defendant constituted a sworn affidavit and thus provided jurisdiction to both a municipal court and a circuit court to hear a charge of DUI despite a failure to include a court date as required by Miss. Code Ann. § 63-9-21(3)(c), because defendant had actual knowledge of the date and the citation had been amended to include it. Wildmon v.

City of Booneville, 980 So. 2d 304, 2007 Miss. App. LEXIS 672 (Miss. Ct. App. 2007), cert. denied, 979 So. 2d 691, 2008 Miss. LEXIS 188 (Miss. 2008).

Citation charging defendant with DUI was not flawed because it contained a P. O. box address for the municipal court rather than a physical address; Miss. Code Ann. § 63-9-21 did not require that a traffic citation contain the court's physical address. Godbold v. Water Valley, 962 So. 2d 133, 2007 Miss. App. LEXIS 504 (Miss. Ct. App. 2007).

Citation charging defendant with driving under the influence of intoxicating liquor indicated an arraignment date, but did not indicate whether it would be a.m. or p.m.; the omission did not render the citation defective under Miss. Code Ann. § 63-9-21(3)(c). Loveless v. City of Booneville, 972 So. 2d 723, 2007 Miss. App. LEXIS 400 (Miss. Ct. App. 2007), cert. dismissed, 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Citation charging defendant with driving under the influence of intoxicating liquor was not defective because it listed the incorrect municipal court address; Miss. Code Ann. § 63-9-21(3)(c) does not require that the address of the municipal court be contained on the citation. Loveless v. City of Booneville, 972 So. 2d 723, 2007 Miss. App. LEXIS 400 (Miss. Ct. App. 2007), cert. dismissed, 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Where all of the information required by Miss. Code Ann. § 63-9-21(3)(c) was contained on the traffic citation issued to defendant, and because there was no requirement that the address of the municipal court be contained on the ticket, the sworn complaint requirement of Miss. Code Ann. § 21-23-7 was met, and the municipal court had jurisdiction over defendant's prosecution. Loveless v. City of Booneville, 958 So. 2d 230, 2007 Miss. App. LEXIS 347 (Miss. Ct. App. 2007).

Fact that an older citation form was issued to defendant in a DUI case did not mean that it was insufficient just because it was not a uniform traffic ticket since the issuing municipality had obtained new tickets; moreover, the law applicable to defendant's case involving the standards for operators of commercial vehicles had not changed. Scott v. City of Booneville, 962 So. 2d 698, 2007 Miss. App. LEXIS 185 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

Fact that a traffic ticket issued in a driving under the influence case had a scrivener's error regarding the date of offense did not render it ineffective under Miss. Unif. Cir. & Cty. R. 7.06 because defendant was put on notice of the date of the offense by the fact that the date was correct on the other two citations he was issued. Scott v. City of Booneville, 962 So. 2d 698, 2007 Miss. App. LEXIS 185 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

Miss. Code Ann. § 63-9-21 does not state that a citation must contain the address of a court; therefore, the fact that a traffic ticket in a DUI case had the wrong court address did not render it ineffective because it stated that the arraignment was to take place in a specific court. Scott v. City of Booneville, 962 So. 2d 698, 2007 Miss. App. LEXIS 185 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

Trial court did not err in convicting defendant of driving under the influence in violation of Miss. Code Ann. § 63-11-30 over his objection to irregularities in the "copy" of the citation/affidavit he received because, although defendant did not have an exact blood alcohol content (BAC) reading listed on the copy of the citation that he received, he was nevertheless aware that his BAC level was above that allowable for individuals under the legal age to purchase alcohol; thus, defendant's traffic ticket complied with Miss. Code Ann. § 63-9-21(6) and (3)(b) and (c). Palmer v. City of Oxford, 860 So. 2d 1203, 2003 Miss. LEXIS 757 (Miss. 2003).

A uniform traffic ticket contained the required information where the notice of the date, time, and court where the defendant was to appear were clearly noted on the ticket signed by the issuing officer. Wheeler v. Stewart, 798 So. 2d 386, 2001 Miss. LEXIS 42 (Miss. 2001).

Justice court judge whose ignorance and incompetence results in skimming of traffic ticket funds or other funds is to be removed from office. In re Inquiry Concerning Garner, 466 So. 2d 884, 1985 Miss. LEXIS 1960 (Miss. 1985).

OPINIONS OF THE ATTORNEY GENERAL

Formal requisites of affidavit are title, venue, signature, jurat, and authentication, but essentials are that it is in writing and that it is sworn to by some legally authorized officer; .traffic ticket form, i.e. affidavit, when sworn to shall be read and considered as whole, which would include parts in issue, i.e. (State of Mississippi, County of), (location) and (highway/Street). Moss, Sept. 12, 1990, A.G. Op. #90-0667.

Uniform Traffic Ticket may be used to charge person with reckless driving; police officer or any other witness to crime may testify to any relevant facts and is not limited to facts stated in affidavit or ticket. Gross, July 15, 1992, A.G. Op. #92-0462.

Although Miss. Code Section 21-23-7 requires complaint filed in municipal court to state statute or ordinance relied upon, Uniform Traffic Ticket Law, Miss. Code Section 63-9-21(2), constitutes exception thereto for traffic violations. Baker, Feb. 10, 1993, A.G. Op. #93-0035.

On traffic ticket, it is required by Miss. Code Section 63-9-21(3)(c) that county of infraction be written on blank signifying location. Bonds, Apr. 7, 1993, A.G. Op. #93-0101.

Under Uniform Traffic Ticket Law, Miss. Code Section 63-9-21, copy of official document is usable when copy is duly sworn to, as was original. Cooke, June 9, 1993, A.G. Op. #93-0239.

Section 63-9-21 is the Uniform Traffic Ticket Law and states that the State Auditor and the Attorney General shall prescribe a uniform traffic ticket. Upon notification by the State Auditor's Office, the city clerk should have the new tickets printed and collect all of the old tickets from the municipal law enforcement officers. Thompson, October 11, 1996, A.G. Op. #96-0678.

As long as the municipality's ticket conforms to the requirements of Section 63-9-21, which is known as the Uniform Traffic Ticket Law, the designation of the Town of Burnsville as the "City of Burnsville" does not deprive the municipal court of jurisdiction. Such a scrivener's error does not deprive the individual issued the ticket of notice concerning the jurisdiction of the municipal court. Therefore, the Town of Burnsville may continue to issue the citations already printed up but, any newly printed tickets should properly identify Burnsville as a town and not a city. Cadle, December 13, 1996, A.G. Op. #96-0725.

A patrol officer appointed as a deputy court clerk may not administer an oath of affidavit to himself or herself for traffic citations issued by that officer, and each citation must be sworn to separately to be considered an affidavit. Pickens, July 3, 1997, A.G. Op. #97-0365.

Original traffic tickets must be retained for at least two years and, while there are no prescribed means or methods of destruction or notification prior to destruction of such tickets after two years, nor any requirements for record keeping past two years, reference should be made to the Local Government Records Committee to ascertain whether there are any schedules mandating retention for a longer time. Harmon, January 30, 1998, A.G. Op. #98-0036.

A dispatcher who takes original information from an incoming telephone call, thereby becoming a potential fact witness, may perform the administrative function of acknowledging or taking an officer's oath on a charging document that results from the situation. Holland, Apr. 5, 2002, A.G. Op. #02-0158.

Because § 63-9-21(3)(c) requires the date and time for appearance on the face of a traffic ticket, notice to a defendant to either pay the ticket or contact the court does not satisfy the requirements of the statute. Payne, Sept. 6, 2002, A.G. Op. #02-0487.

By using the mandatory "shall" in subsection (3)(c) of this section, the Legislature has required the date and time for appearance to be shown on the face of the citation. Payne, Oct. 10, 2002, A.G. Op. #02-0559.

In regard to revising Implied Consent or DUI citations because of changes in the law, a municipality must comply with this section and may not delay ordering revised citations until the current supply is exhausted. Mullen, Oct. 18, 2002, A.G. Op. #02-0572.

An individual, who is not a municipal police officer, may file an affidavit with the municipal court charging another individual with a traffic offense that occurred within the municipal limits. A uniform traffic ticket need not be used in such a circumstance. Sorrell, May 21, 2004, A.G. Op. 04-0220.

The law enforcement officer who actually issues the ticket to the defendant must sign the affidavit/ticket and acknowledge the affidavit when filed with the clerk of the court. One officer cannot acknowledge an affidavit/citation that is issued by another officer. Hatcher, July 30, 2004, A.G. Op. 04-0369.

Policemen acting in their capacity as employees of a city must use traffic tickets issued by that city and identifying that city's municipal court as the court hearing the cause. Any tickets issued by the sheriff's office, constables, or highway patrolmen should be issued on tickets identifying their respective departments and heard by justice court. Bush, Jan. 14, 2005, A.G. Op. 04-0641.

A traffic ticket that contains the information set forth in Section 63-9-21 constitutes a "sworn affidavit" as referred to in Section 21-23-7(1) when the officer who issues the ticket has it properly attested and filed with the proper court; a criminal affidavit can be acknowledged by any person authorized by law to administer oaths and this would include a court clerk or deputy court clerk from another jurisdiction or a notary public. Aldridge, Apr. 1, 2005, A.G. Op. 05-0111.

An officer issuing a ticket may have it acknowledged by a court clerk of one county and mail the ticket (or have the clerk mail the ticket) to the clerk of the court to which the ticket is returnable. Carter, Apr. 1, 2005, A.G. Op. 05-0042.

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

Since campus police officers are vested with the powers of a constable, a campus police department should obtain uniform traffic tickets from the chancery clerk of the county. Via, Oct. 28, 2005, A.G. Op. 05-0522.

The department of public safety of a community hospital does not have authority to issue traffic citations on the public streets surrounding the hospital or to persons operating a motor vehicle on the hospital's premises. Castle, Nov. 14, 2005, A.G. Op. 05-0498.

A traffic citation must indicate the title of the individual acknowledging the citation in order for it to be properly sworn to; however, if the lack of "title" is raised, the court may allow the citation to be amended to reflect the proper title of the one administering the oath. McClellan, Apr. 21, 2006, A.G. Op. 06-0103.

Because the uniform traffic ticket approved by the state auditor and the attorney general contains a line for the address of the court, it may not be left blank. Mullen, June 2, 2006, A.G. Op. 06-0216.

The uniform traffic citation provided should not be used for a violation of a municipal ordinance. Franklin, Nov. 17, 2006, A.G. Op. 06-0592.

§ 63-9-23. Exclusivity of procedure prescribed in chapter.

The foregoing provisions of this chapter shall govern all police officers in making arrests without a warrant for violations of Chapters 3, 5 and 7 of this title for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

HISTORY: Codes, 1942, § 8279; Laws, 1938, ch. 200.

OPINIONS OF THE ATTORNEY GENERAL

Statutes authorize officer of Mississippi Highway Patrol to use Uniform Traffic Ticket for certain violations which are committed in their presence, regardless of whether officer was on highway or on county road or city street; preprinted affidavit used by law enforcement for D.U.I. may be used by highway patrol for any D.U.I. charge filed by officer without reference to whether offense was committed on highway, county road, city street, etc. Huffman, April 26, 1990, A.G. Op. #90-0278.

§ 63-9-25. Deposit of driver's license in lieu of bail.

(1) Whenever any person lawfully possessed of a driver's license theretofore issued to him by the Department of Public Safety of the State of Mississippi, or under the laws of any other state or territory, or the District of Columbia of the United States, shall be arrested and charged with any offense against the traffic or motor vehicle laws or rules of the road of this state, or any municipality thereof, he shall have the option of depositing his driver's license so issued to him with the arresting officer or the court in lieu of any other security which may be required for his appearance in any court in this state in answer to such charge lodged in such court.

(2) If such person arrested elects to deposit his license as provided, the arresting officer or court shall issue such person a receipt for said license upon a form furnished or prescribed by the Mississippi Department of Public Safety, and thereafter said person shall be permitted to operate a motor vehicle upon the highways of this state and streets of the municipalities thereof during the pendency of the case in which the license was deposited unless his license or privilege is otherwise revoked, suspended or canceled, but in no case for a period longer than thirty (30) days.

(3) The clerk of the court in which the charge is lodged shall immediately forward to the department the license of the driver deposited in lieu of bail if the driver fails to appear in answer to the charge against him. The Commissioner of Public Safety or his authorized agent shall, upon receipt of a license so forwarded by the court, suspend the driver's license and driving privilege of the defaulting driver until notified by the court that the charge against such driver has been finally adjudicated.

(4) The commissioner shall, upon receipt of a license of a nonresident driver, forward notice to his counterpart in the state of the driver's residence of the fact that such driver has been charged with a traffic or motor vehicle offense or a violation of the rules of the road and has so deposited his license in lieu of bail.

(5) The making of an application for a duplicate driver's license during the period when the original license is posted for an appearance in a court shall be unlawful, shall constitute a misdemeanor and a person convicted thereof shall be subject to a fine of not more than Five Hundred Dollars ($500.00) or imprisonment for not more than six (6) months, or both fine and imprisonment.

(6) The provisions of this section shall not govern arrests for driving under the influence of alcohol. The procedure set forth in the Mississippi

Implied Consent Law, Sections 63-11-1 through 63-11-47, Mississippi Code of 1972, shall apply.

HISTORY: Laws, 1975, ch. 384; Laws, 1976, ch. 387; Laws, 1981, ch. 491, § 11; Laws, 1990, ch. 350, § 1, eff from and after July 1, 1990.

Cross References — Notice by Commissioner of Public Safety to person concerning suspension, cancellation or revocation of such person's driver's license or driving privileges, see § 63-1-52.

Guaranteed arrest bond certificate in lieu of cash bail for certain traffic violations, see § 63-9-27.

Applicability of this section to nonresident traffic violator compact, see § 63-10-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

An officer may release a defendant that has been charged with a traffic offense and is in his custody on a written notice to appear or if that officer has been designated by the municipal judge, may take a bond, cash or otherwise, from such a defendant. Powell, Jan. 10, 2003, A.G. Op. #02-0766.

This section allows a defendant to post his driver's license in lieu of bond when he is charged with a traffic offense. The court may not set a bail bond instead of accepting his license in lieu of bail. Strait, Sept. 26, 2003, A.G. Op. 03-0519.

§ 63-9-27. Posting of guaranteed arrest bond certificate in lieu of cash bail.

(1) A guaranteed arrest bond certificate with respect to which a fidelity and surety company has become surety as provided in subsection (2) of this section, when posted by the person whose signature appears thereon, shall be accepted in lieu of cash bail in an amount not to exceed two hundred dollars ($200.00), as a bail bond, to guarantee the appearance of such person in any court in this state at such time as may be required by the court, when such person is arrested for violation of any traffic laws of any municipality or county of this state, except for the offense of driving while under the influence of intoxicating liquors, drugs or narcotics, or for any felony, and the alleged violation was committed prior to the date of expiration shown on such guaranteed arrest bond certificate.

Any such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and collection provisions of law applicable to a bail bond, except that any judgment forfeiting a guaranteed arrest bond certificate rendered under such forfeiture and collection provisions shall, at any time within thirty (30) days after rendition, be set aside upon the surrender, or the appearance and trial and conviction or acquittal of the defendant, or upon a continuance granted upon motion of the district attorney after such appearance.

(2) Any domestic or foreign insurance company which has qualified to transact fidelity and surety insurance business in this state may, in any year,

become surety in an amount not to exceed two hundred dollars ($200.00) with respect to each guaranteed arrest bond certificate issued in such year by an automobile club, automobile association or insurance company authorized to transact automobile liability insurance business within this state or by the fidelity and surety company itself.

The term "guaranteed arrest bond certificate," as used in this section, means a printed card or other certificate issued by an automobile club, automobile association, insurance company authorized to transact automobile liability insurance within this state, or an insurance company authorized to transact fidelity and surety insurance business within this state to any of its members or insureds, which is signed by such member or insured, and contains a printed statement that a fidelity and surety company authorized to do business in this state guarantees the appearance of the person whose signature appears on the card or certificate, and that such company will, in the event of the failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars ($200.00).

The issuance of a "guaranteed arrest bond certificate," as defined above, by an automobile club, automobile association or insurance company not authorized to transact fidelity and surety insurance business in this state shall not be construed as engaging in fidelity and surety insurance business in this state by such automobile club, automobile association or insurance company.

(3) This section shall be supplementary and complementary to section 63-9-25 and shall not be construed as affecting or amending that section in any way.

HISTORY: Laws, 1979, ch. 318; Laws, 1981, ch. 491, § 12, eff from and after July 1, 1981.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1). The letter "s" was deleted from the end of the word "offenses" so that "except for the offenses of driving while under the influence of intoxicating liquors, drugs or narcotics" now reads as "except for the offense of driving while under the influence of intoxicating liquors, drugs or narcotics." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Cross References — Authorized automobile club services, see § 83-11-203.

Fidelity or surety company authorized to give bail, see § 99-5-7.

Cash bail bond, see § 99-5-9.

Forfeiture of bond, scire facias, see § 99-5-25.

Authority of sureties to arrest and surrender principal, see § 99-5-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

RESEARCH REFERENCES

Law Reviews.

1979 Mississippi Supreme Court Review: Insurance, 50 Miss. L. J. 813, December, 1979.

§ 63-9-29. Repealed.

Repealed by Laws, 2002, ch. 320, § 4, eff from and after July 1, 2002.

§ 63-9-29. [Laws, 1985, ch. 363, § 1; Laws, 1990, ch. 403, § 1, eff from and after July 1, 1990.]

Editor's Notes — Former § 63-9-29 provided for the waiver of trial and payment of fine without appearing in justice court.

§ 63-9-31. Additional surcharge for traffic violations to fund automation of citations issued by Highway Safety Patrol and wireless radio communications programs; funding of agency expenses; deposit of monies into State General Fund.

(1) In addition to any other monetary penalties and other penalties imposed by law, any county, municipality or the Pearl River Valley Water Supply District Patrol which participates in a wireless radio communications program approved by the applicable governing authorities may assess an additional surcharge in an amount not to exceed Ten Dollars ($10.00) on each person upon whom a court imposes a fine or other penalty for each violation of Title 63, Mississippi Code of 1972, except offenses relating to vehicular parking or registration. On all citations issued by Mississippi Highway Safety Patrol officers, a surcharge in the amount of Ten Dollars ($10.00) shall be collected by the court and deposited as provided in subsection (2) of this section. The proceeds from the surcharge on citations issued by county and municipal law enforcement officers or the Pearl River Valley Water Supply District Patrol may be used by a county or municipality only to fund that county's or municipality's or the Pearl River Valley Water Supply District Patrol's participation in the wireless radio communications program by funding public safety wireless communications systems and related computer and communications equipment. The proceeds from the surcharge on citations issued by Mississippi Highway Safety Patrol officers shall be used as provided in subsection (2) of this section. All proceeds from the surcharge imposed by this subsection shall be deposited into a special fund in the Department of Public Safety's Office of Public Safety Planning. The Office of Public Safety Planning shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating governmental entities. The maximum amount that a governmental entity may receive from the special fund shall be an amount equal to the deposits made into the fund by that entity, less one percent (1%) to be retained by the Office of Public Safety Planning to defray the costs of administering the special fund. Interest earned on the special fund shall remain in the fund and shall be used by the Office of Public Safety Planning to further defray the costs of administering the special fund.

(2) Deposits into the special fund resulting from citations issued by the Mississippi Highway Safety Patrol shall be utilized as follows: Fifty percent

(50%) of the deposits into the special fund shall be used to automate the citations issued by Mississippi Highway Safety Patrol officers (including the transmittal of citations to the justice court, retrieval of the disposition from the justice court, and updating the driver's records) and fifty percent (50%) of the deposits into the special fund shall be used for the purpose of funding wireless communications and related computer equipment and computer software, subject to the approval of the Mississippi Department of Information Technology Services.

(3) Approval of a wireless radio communications program must be given by the applicable governing authorities when:

(a) The program includes the sharing of support facilities including, but not limited to, towers, shelters and microwave by participating entities; or

(b) The program includes the establishment of a mutual aid system using common radio frequency channels between participating entities; or

(c) The program sets forth a feasible methodology that utilizes the radio frequency spectrum in an efficient manner.

(4) Participating counties, municipalities, the Pearl River Valley Water Supply District Patrol and the Mississippi Highway Safety Patrol must provide notification of facilities available for interoperability to the Mississippi Department of Information Technology Services annually.

(5) Counties and municipalities and the Pearl River Valley Water Supply District Patrol participating in a wireless radio communications program and the Mississippi Highway Safety Patrol must comply with competitive bidding requirements prescribed in Section 31-7-13 and are encouraged to utilize an open architecture, nonproprietary system.

(6) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(7) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 2001, ch. 569, § 12; Laws, 2002, ch. 486, § 1; Laws, 2004, ch. 441, § 1; Laws, 2006, ch. 311, § 1; Laws, 2008, ch. 522, § 1; Laws, 2016, ch. 459, § 17, eff from and after July 1, 2016.

Editor's Notes — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

OPINIONS OF THE ATTORNEY GENERAL

The statute does not require that all municipalities in a participating county participate or that a county participate if municipalities within that county wish to participate; however, for a municipality to participate in an intergovernmental wireless radio communications program, there must be at least one other governmental entity in that program, as one municipality cannot, by itself, participate in an intergovernmental wireless radio communications program. Crow, Jr. Oct. 5, 2001, A.G. Op. #01-0613.

§ 63-9-33. Assessment of additional surcharge on traffic violations and vehicular parking or registration offenses by certain municipalities to fund computerized crime prevention measures.

In addition to any other monetary penalties and other penalties imposed by law, any municipality having a population of fifteen thousand (15,000) or more according to the most recent federal decennial census may assess an additional surcharge in an amount not to exceed One Dollar ($1.00) for each violation of Title 63 and offenses related to vehicular parking or registration. The proceeds from the surcharge shall be dedicated to the use of the municipal police department and used solely to offset the cost of implementation of certain computerized crime prevention measures and the equipment necessary therefor.

HISTORY: Laws, 2007, ch. 465, § 1, eff from and after July 1, 2007.

Editor's Notes — Laws of 2007, ch. 465, § 2 provides:
"SECTION 2. This act shall be codified in Chapter 9, Title 63, Mississippi Code of 1972, relating to traffic violations procedure."

§ 63-9-35. Certain traffic citations issued in other states are prohibited from being placed on a driver's record or reported to insurance.

(1) A traffic citation issued by another state from the use of an automated traffic law enforcement system or a traffic law enforcement method not authorized by the State of Mississippi shall not be placed on the person's driving record in this state.

(2) A traffic citation issued by another state from the use of an automated traffic law enforcement system or a traffic law enforcement method not authorized by the State of Mississippi shall not be reported to an insurance company for insurance purposes.

(3) For the purposes of this section, 'automated traffic law enforcement system' means a camera, optical device or other equipment that:

(a) Detects a traffic law violation;

(b) Records images of the license plate of a motor vehicle that is not operated in compliance with traffic laws; and

(c) Issues a citation for a traffic law violation.

HISTORY: Laws, 2012, ch. 398, § 1, eff from and after July 1, 2012.

§ 63-9-37. Recognition of traffic fines resulting from automated recording equipment of another state; suspension of driver's license for failure to pay fine.

The Mississippi Department of Public Safety shall only recognize any civil or criminal fine, fee, citation or penalty for a violation of compliance with traffic signals, traffic speeds or other traffic laws, rules or regulations in another state that results from the use of automated recording equipment or system as defined under Section 17-25-19 if that state is a member of the Driver License Compact as provided under Section 63-1-103. Further, the Mississippi Department of Public Safety shall not suspend the driver's license of a person for failure to pay any civil or criminal fine, fee, citation or penalty for such a violation unless the state that is due the fine, fee, citation or penalty is a member of the Driver License Compact.

HISTORY: Laws, 2013, ch. 340, § 1, eff from and after passage (approved Mar. 14, 2013).

Cross References — Diver License Compact, see § 63-1-101 et seq.

CHAPTER 10.

NONRESIDENT TRAFFIC VIOLATOR COMPACT

Sec.

63-10-1. Definitions.
63-10-3. Issuance of citation to resident of reciprocating state; security for appearance; reporting of noncompliance with citation.
63-10-5. Proceedings upon noncompliance with traffic citation by nonresident.

§ 63-10-1. Definitions.

As used in this chapter:

(a) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(b) "Reciprocating state" means any state which extends by its laws to residents of Mississippi, substantially the same rights and privileges as provided for by this chapter.

(c) "Citation" means any citation, ticket or other document issued by a state highway patrol officer for the violation of a traffic law, ordinance, rule or regulation, ordering the alleged offender to appear.

(d) "License" means any operator's or chauffeur's permit or license, or any other license or permit to operate a motor vehicle issued under the laws of this state or a reciprocating state including:

(i) Any temporary or learner's permit;

(ii) The privilege of any person to operate a motor vehicle whether or not such person holds a valid license; and

(iii) Any nonresident's operating privilege conferred upon a nonresident of a state pertaining to the operation by such person of a motor vehicle in such state.

(e) "Collateral" or "bond" means any cash or other security deposited to secure an appearance for trial following the issuance of a citation by a state highway patrol officer for the violation of a traffic law, ordinance, rule or regulation.

(f) "Personal recognizance" means a signed agreement by an alleged offender that he will comply with the terms of a court's directive as the result of a traffic citation served him.

(g) "Nonresident" refers only to a person who is a resident of or holds a drivers license issued by a reciprocating state.

HISTORY: Laws, 1979, ch. 421, § 1, eff from and after passage (approved March 21, 1979).

Cross References — Highway safety patrol officers generally, see §§ 45-3-1 et seq.
Comparable Laws from other States — Arkansas: A.C.A. § 27-54-101.
Iowa: Iowa Code § 321.513.
Louisiana: La. R.S. 32:1441 et seq.
Texas: Tex. Transp. Code § 703.001 et seq.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 19.

§ 63-10-3. Issuance of citation to resident of reciprocating state; security for appearance; reporting of noncompliance with citation.

(1) A state highway patrol officer, in lieu of arrest for a traffic violation, may issue a citation, as would be appropriate under the circumstances, to any motorist who is a resident of this state or holds a license issued by a reciprocating state and shall not, subject to the exceptions noted in subsection (2) of this section, require such motorist to post collateral or bond to secure his appearance but shall accept such motorist's drivers license in lieu of bond or security as provided by Section 63-9-25, Mississippi Code of 1972, provided, however, that a person so charged shall have the right, upon his request, to post collateral or bond in a manner as provided by law, and in such case, the provisions of this chapter shall not apply.

(2) No motorist shall be entitled to receive a citation under the provisions of subsection (1) of this section nor shall any state highway patrol officer issue a citation as provided for therein if the offense be included in the following:

(a) An offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by the laws of this state; or

(b) An offense for which state statutes require the revocation or suspension of a motorist's license.

(3) Upon the failure of any resident or nonresident to comply with the terms of a traffic citation, the issuing officer shall request that a warrant be issued and shall report same to the commissioner of public safety or his duly authorized agent, who shall suspend such person's drivers license until such time as a disposition is had on said undisposed of traffic citation. Such report shall clearly identify the person charged; describe the violation, specify the statute, code or ordinance violated; indicate the location of the offense; give a description of the vehicle involved; and show the registration or license number of the vehicle. Such report shall be signed by the issuing officer.

HISTORY: Laws, 1979, ch. 421, § 2, eff from and after passage (approved March 21, 1979).

Cross References — Revocation of municipal license of bus operator, see § 21-27-155.

Authority of highway patrol officers to arrest for traffic violations, see § 45-3-21.

Revocation of operators' licenses, see § 63-1-51.

§ 63-10-5. Proceedings upon noncompliance with traffic citation by nonresident.

(1) Upon receipt of a state highway patrol officer's report as described in Section 63-10-3 the commissioner of public safety or his duly authorized agent

shall transmit a certified copy of such report to the official in charge of the issuance of licenses in the reciprocating state in which the nonresident resides or by which he is licensed.

(2) Upon receipt from the licensing authority of this state or a reciprocating state in which a citation was issued of a certification of noncompliance with a citation issued in this state or a reciprocating state by a person holding a valid license issued by this state, the commissioner of public safety or his duly authorized agent shall immediately suspend such person's drivers license. The order of suspension shall indicate the reason therefor and notify the motorist that his license shall remain suspended until he has furnished satisfactory evidence indicating that he has fully complied with the terms of the court having jurisdiction in the matter. However, the department of public safety, or any employee thereof, shall not collect nor act as a collecting agency for any court-imposed fine in relation to an outstanding, undisposed of traffic case.

(3) A copy of any suspension order issued hereunder shall be furnished to the licensing authority of the reciprocating state in which the citation was issued.

(4) It shall be the duty of the director of driver services, department of public safety, to ascertain and remain informed as to which states are "reciprocating states" hereunder and, accordingly, to maintain a current listing of such states. The listings shall periodically be disseminated among the appropriate official positions of any state agency, county or municipality of this state and the licensing authorities in all other reciprocating states pursuant hereto.

HISTORY: Laws, 1979, ch. 421, § 3, eff from and after passage (approved March 21, 1979).

CHAPTER 11.

IMPLIED CONSENT LAW

Sec.
63-11-1. Short title.
63-11-3. Definitions.
63-11-5. Implied consent to chemical tests; administration of tests; warnings; form of traffic tickets, citations or affidavits; advice regarding right to request legal or medical assistance; rules and regulations.
63-11-7. Authorization of blood test for dead or unconscious accident victims; use of test results.
63-11-8. Testing of motor vehicle operator involved in accident resulting in death.
63-11-9. Administration of blood test under § 63-11-7.
63-11-11. Taking of urine specimens.
63-11-13. Right of accused to have test administered by person of his choice; effect of failure to obtain additional test.
63-11-15. Availability of information concerning test directed by law enforcement officer to accused or his attorney.
63-11-17. Liability for administering test or analysis.
63-11-19. Requirements as to methods of testing and qualifications of test administrators; certification of administrators; testing and certification of accuracy of methods, machines or devices.
63-11-21. Actions by law enforcement officer upon refusal of driver to submit to test generally.
63-11-23. Review of report of law enforcement officer by Commissioner of Public Safety; notice of suspension; seizure of license where test indicates blood alcohol concentration above specified level; temporary permit to drive; denial of permit; representation of state in proceedings.
63-11-25. Appeals from forfeiture, suspension or denial of license by commissioner generally; exercise of driving privilege suspended during pendency of appeal.
63-11-26. Actions which foreclose judicial review.
63-11-27. Notification of authorities in home state of suspension of nonresident drivers privilege.
63-11-29. Repealed.
63-11-30. Operating a vehicle while under influence of alcohol or other drugs; penalties; zero tolerance for minors; DUI test refusal; aggravated DUI; DUI child endangerment; expunction; nonadjudication.
63-11-31. Interlock restricted license; ignition interlock device; impoundment or immobilization of vehicles; use of Interlock Device Fund to offset cost of device installation and operation by indigent offenders; reinstatement of license without interlock restriction.
63-11-31.1. Mississippi Forensics Laboratory to promulgate rules and regulations for court-ordered drug testing of DUI/other drug violators; evaluation of proposals made by and approval of vendors to be utilized by trial courts.
63-11-32. Development, implementation and funding of driver improvement program for first offenders convicted of driving while intoxicated or under influence of another substance which impairs ability to operate motor vehicle.
63-11-33. Interlock Device Fund; purpose; use of monies.
63-11-35. Repealed.
63-11-37. Contents and disposition of record of conviction under § 63-11-30.
63-11-39. Reduction of charges under chapter.

Sec.
63-11-40. Driving while driving license or privilege cancelled, suspended or revoked.
63-11-41. Admissibility in criminal prosecution of evidence of refusal to submit to chemical test.
63-11-43. Repealed.
63-11-45. Denial of insurance coverage on ground of refusal to submit to test or upon basis of test results.
63-11-47. Selection and purchase of equipment and supplies.
63-11-49 through 63-11-53. Repealed.

§ 63-11-1. Short title.

This chapter may be cited as the Mississippi Implied Consent Law.

HISTORY: Codes, 1942, § 8175-01; Laws, 1971, ch. 515, § 1, eff from and after April 1, 1972.

Cross References — Provisions of this chapter applicable to Mississippi Commercial Driver's License Law, see § 63-1-202.

Provisions of the Implied Consent Law applying instead of statute allowing deposit of driver's license in lieu of bail, in cases of driving while intoxicated, see § 63-9-25.

RESEARCH REFERENCES

ALR.

Snowmobile operation as DWI or DUI. 56 A.L.R.4th 1092.

Operation of bicycle as within drunk driving statutes. 73 A.L.R.4th 1139.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 332 et seq.

CJS.

61A C.J.S., Motor Vehicles §§ 1574, 1575, 1583 et seq.

Practice References.

Mississippi Criminal and Traffic Law Manual (Michie).

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Eades, Jury Instructions in Automobile Actions (Michie).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

Reiff, Drunk Driving and Related Vehicular Offenses, Third Edition (Michie).

Law Reviews.

Fraiser, Mississippi Informed Consent Law: A Survey of Decisions Responding to Recent Scientific Research on Tests for Intoxication, 72 Miss. L.J. 1037, Spring, 2003.

§ 63-11-3. Definitions.

The following words and phrases shall have the meaning ascribed herein, unless the context clearly indicates otherwise:

(a) "Driving privilege" or "privilege" means both the driver's license of those licensed in Mississippi and the driving privilege of unlicensed residents and the privilege of nonresidents, licensed or not, the purpose of this section being to make unlicensed and nonresident drivers subject to the same penalties as licensed residents.

(b) "Community service" means work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

(c) "Chemical test" means an analysis of a person's blood, breath, urine or other bodily substance for the determination of the presence of alcohol or any other substance which may impair a person's mental or physical ability.

(d) "Refusal to take breath, urine and/or blood test" means an individual declining to take a chemical test, and/or the failure to provide an adequate breath sample as required by the Implied Consent Law when requested by a law enforcement officer.

(e) "Alcohol concentration" means either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.

(f) "Qualified person to withdraw blood" means any person who has been trained to withdraw blood in the course of their employment duties including but not limited to laboratory personnel, phlebotomist, emergency medical personnel, nurses and doctors.

(g) "Victim impact panel" means a two-hour seminar in which victims of DUI accidents relate their experiences following the accident to persons convicted under the Implied Consent Law. Paneling programs shall be based on a model developed by Mothers Against Drunk Driving (MADD) victim panel or equivalent program approved by the court.

(h) "Booked" means the administrative step taken after the arrested person is brought to the police station, which involves entry of the person's name, the crime for which the arrest was made, and other relevant facts on the police docket, and which may also include photographing, fingerprinting, and the like.

HISTORY: Codes, 1942, § 8175-24; Laws, 1971, ch. 515, § 24; Laws, 1983, ch. 466, § 1; Laws, 1996, ch. 527, § 3, eff from and after July 2, 1996.

Editor's Notes — Laws of 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

§ 63-11-5. Implied consent to chemical tests; administration of tests; warnings; form of traffic tickets, citations or affidavits; advice regarding right to request legal or medical assistance; rules and regulations.

(1)(a) Any person who operates a motor vehicle upon the public highways, public roads and streets of this state shall be deemed to have given his consent, subject to the provisions of this chapter, to a chemical test or tests of his breath, blood or urine for the purpose of determining alcohol concentration. A person shall give his consent to a chemical test or tests of his breath, blood or urine for the purpose of determining the presence in his body of any other substance which would impair a person's ability to operate a motor vehicle.

(b) The test or tests shall be administered at the direction of any authorized officer, when such officer has reasonable grounds and probable cause to believe that the person was driving or had under his actual physical control a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor or any other substance which had impaired such person's ability to operate a motor vehicle.

(2)(a) A breath analysis test must be administered by a person who has met all the educational and training requirements of the appropriate course of study prescribed by the Board on Law Enforcement Officers Standards and Training; however, sheriffs and elected chiefs of police are exempt from the educational and training requirement. A breath analysis test must not be given to any person within fifteen (15) minutes of consumption of any substance by mouth.

(b) For purposes of this section, the term "authorized officer" means any highway patrol officer, sheriff or his duly commissioned deputies, police officer in any incorporated municipality, national park ranger, officer of a state-supported institution of higher learning campus police force if such officer is exercising this authority in regard to a violation that occurred on campus property, or security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law of 1978 if such officer is exercising this authority in regard to a violation that occurred within the limits of the Pearl River Valley Water Supply District.

(3) If the officer has reasonable grounds and probable cause to believe such person to have been driving a motor vehicle upon the public highways, public roads, and streets of this state while under the influence of intoxicating liquor or any other substance that has impaired the person's ability to operate a motor vehicle, the officer shall inform the person that his failure to submit to such chemical test or tests of his breath, blood or urine shall result in the suspension of his privilege to operate a motor vehicle upon the public streets and highways of this state for a period of ninety (90) days if the person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year if the person has a prior conviction under Section 63-11-30.

(4) The traffic ticket, citation or affidavit issued to a person arrested for a violation of this chapter shall conform to the requirements of Section 63-9-21(3)(b), and, if filed electronically, shall conform to Section 63-9-21(8).

(5) Any person arrested under the provisions of this chapter shall be informed that he has the right to telephone for the purpose of requesting legal or medical assistance immediately after being booked for a violation under this chapter.

(6) The Commissioner of Public Safety and the Mississippi Forensics Laboratory created pursuant to Section 45-1-17 are authorized to adopt procedures, rules and regulations applicable to the Implied Consent Law.

HISTORY: Codes, 1942, § 8175-09; Laws, 1971, ch. 515, § 9; Laws, 1981, ch. 491, § 1; Laws, 1983, ch. 466, § 2; Laws, 1988, ch. 568, § 1; Laws, 1991, ch. 480, § 4; Laws, 1991, ch. 577, § 1; Laws, 1992, ch. 525, § 1; Laws, 1993, ch. 354, § 1; Laws, 1996, ch. 527, § 4; Laws, 1998, ch. 551, § 1; Laws, 2012, ch. 550, § 2; Laws, 2015, ch. 452, § 13; Laws, 2016, ch. 376, § 1, eff from and after July 1, 2016; Laws, 2018, ch. 447, § 4, eff from and after July 1, 2020.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross References — Pearl River Valley Water Supply District Security Officer Law of 1978, see §§ 51-9-171 et seq.

Confiscation of driver's license by arresting officer upon refusal of driver to submit to chemical test under this section, see § 63-11-21.

Penalty for conviction following tests provided for by this section, see § 63-11-30.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.
3. Types of tests authorized.
4. Mandatory pre-test observation.
5. Admissibility and sufficiency of test results.
6. Jury instructions.
7. Miscellaneous.

1. In general.

There was no authority in support of the defendant's contention that the officer must arrest the individual before administering the breath test. Green v. State, 710 So. 2d 862, 1998 Miss. LEXIS 143 (Miss. 1998).

As long as there is probable cause to believe that the person is impaired by some substance, an officer has acted in accordance with the statute, and consequently, the results of a blood alcohol concentration tests are admissible. Green v. State, 710 So. 2d 862, 1998 Miss. LEXIS 143 (Miss. 1998).

The statute provides for an affidavit containing the required information as well as a ticket. Green v. State, 710 So. 2d 862, 1998 Miss. LEXIS 143 (Miss. 1998).

Language in the statute that the arresting officer shall inform a driver arrested for driving under the influence of intoxicating liquor that his failure to submit to a chemical test will result in the suspension of his driver's license does not mandate an arresting officer to advise a suspect of the law's existence. Ewing v. State, 300 So. 2d 916, 1974 Miss. LEXIS 1649 (Miss. 1974).

2. Constitutionality.

The statutory law providing for prehearing suspension of a driver's license when the driver refuses to submit to a breathalyzer test is not violative of minimum due process requirements. Lavinghouse v. Mississippi Highway Safety Patrol, 620 So. 2d 971, 1993 Miss. LEXIS 255 (Miss. 1993).

Initial stop of motorists at highway sobriety checkpoints conducted by state police did not violate Fourth Amendment, as balance among state's interest in preventing drunk driving, extent to which checkpoint program could reasonably be said to advance that interest, and degree of intrusion upon individual motorists, weighed in favor of program. Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412, 1990 U.S. LEXIS 3144 (U.S. 1990).

3. Types of tests authorized.

The language "chemical test or test of his breath," as provided in §§ 63-11-5 and 63-11-30, contemplates the use of an intoxilyzer machine as a proper means of measuring alcohol content of the blood; as long as accuracy, reliability, and all other factors questioning the competency of the test as proof of intoxication are complied with by the administering officers, the proof thereunder is admissible. Fulton v. City of Starkville, 645 So. 2d 910, 1994 Miss. LEXIS 533 (Miss. 1994).

The statutes under the Implied Consent Law allow not only a chemical test or tests of a person's breath, but also other tests of a person's blood or urine for determining alcoholic content; all 3 methods-breath, blood and urine tests-are valid tests for determining alcoholic content in a person's body which would impair that person's ability to operate a motor vehicle. Fulton v. City of Starkville, 645 So. 2d 910, 1994 Miss. LEXIS 533 (Miss. 1994).

4. Mandatory pre-test observation.

Defendant's breathalyzer tests were admissible because (1) an officer testified defendant was observed for at least 20 minutes before the test was administered, and (2) any dispute about the officer's testimony went to weight and credibility, not admissibility. Prince v. State, 225 So. 3d 545, 2017 Miss. App. LEXIS 289 (Miss. Ct. App. 2017).

Defendant's conviction for driving under the influence did not deprive defendant of a protected property right when an officer allegedly did not observe defendant for the required 20-minute period before administering a breath test because (1) it was not error to find defendant was observed for the mandatory period, and (2) defendant had no protected property right in defendant's driving privilege. Gore v. State, 168 So. 3d 1097, 2013 Miss. App. LEXIS 842 (Miss. Ct. App. 2013), cert. denied, 146 So. 3d 981, 2014 Miss. LEXIS 450 (Miss. 2014).

It was not error to accept an officer's testimony that the officer observed defendant for the required 20 minutes before administering a breath test because (1) the officer's conversation with defendant's wife took no significant amount of time, and (2) defendant was in the officer's presence and observed by other officers. Gore v. State, 168 So. 3d 1097, 2013 Miss. App. LEXIS 842 (Miss. Ct. App. 2013), cert. denied, 146 So. 3d 981, 2014 Miss. LEXIS 450 (Miss. 2014).

The length of time that a person charged with driving under the influence must be observed prior to the administration of the breath test is mandatory. By statute, that length of time is 15 minutes; however, police procedure requires that the person be observed for 20 minutes. The observation itself can be performed as long as the defendant is in the presence of the officer. The officer is not required to "stare at" the defendant for the observation to be effective. A dispute as to whether the observation lasted the mandatory length of time or whether the observation was performed while in the presence of an officer goes to the weight of the testimony and the credibility of the witnesses. Fisher v. Eupora, 587 So. 2d 878, 1991 Miss. LEXIS 669 (Miss. 1991).

5. Admissibility and sufficiency of test results.

Where defendant was convicted of first offense DUI, the trial court did not err by admitting the tests results from the Intoxilizer 8000, which showed a .11 blood alcohol content; the test began 27 minutes after the observation period began, well beyond the statutorily-required 15-minute waiting period set forth in Miss. Code Ann. § 63-11-5(1), and proper procedures were followed, the administrator of the test was certified to perform the test, and the machine had been properly certified. Godbold v. Water Valley, 962 So. 2d 133, 2007 Miss. App. LEXIS 504 (Miss. Ct. App. 2007).

In a suit by a minor driver against a medical insurer seeking coverage for injuries suffered in a one-car accident, the minor's excessive blood alcohol level was not inadmissible under the implied consent law because the blood test was taken by a hospital and was admissible under Miss. Code. Ann. § 63-11-5. Allen v. Clarendon Nat'l Ins. Co., 2006 U.S. Dist. LEXIS 64602 (S.D. Miss. Sept. 8, 2006).

Officer testified that approximately 45 minutes passed from the time he encountered defendant until the time the breathalyzer test was run, that defendant was in his presence the entire time and was not allowed to take anything by mouth during that time; the trial judge properly held the evidence to be admissible, and the jury found the testimony of the officer to be credible on this question. Graham v. State, 878 So. 2d 162, 2004 Miss. App. LEXIS 54 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 922 (Miss. 2004).

Pursuant to Miss. Code Ann. § 63-11-5, the officer properly read defendant his rights before attempting to administer the intoxilyzer test and obtaining a blood alcohol content reading. Palmer v. City of Oxford, 860 So. 2d 1203, 2003 Miss. LEXIS 757 (Miss. 2003).

The language "chemical test or test of his breath," as provided in §§ 63-11-5 and 63-11-30, contemplates the use of an intoxilyzer machine as a proper means of measuring alcohol content of the blood; as long as accuracy, reliability, and all other factors questioning the competency of the test as proof of intoxication are complied with by the administering officers, the proof thereunder is admissible. Fulton v. City of Starkville, 645 So. 2d 910, 1994 Miss. LEXIS 533 (Miss. 1994).

A defendant's arrest for driving while intoxicated was legal, and therefore the subsequent intoxilyzer test was not tainted, even though the arresting officer did not observe the defendant driving, where the defendant admitted to the arresting officer that he had been driving an automobile which was involved in an accident, and the defendant was publicly intoxicated in the presence of the officer and others in violation of § 97-29-47. Goforth v. Ridgeland, 603 So. 2d 323, 1992 Miss. LEXIS 348 (Miss. 1992).

An officer's failure to inform the defendant that he had a right to refuse the officer's request for a blood sample did not render the test results inadmissable in a manslaughter prosecution against the defendant where the officer had probable cause to obtain the blood sample in that the officer knew that the defendant was the driver of an automobile which had collided head on with another vehicle, the collision occurred on a straight and level highway when the road condition was dry, the officer knew that at least two people were dead in the vehicle which the defendant hit, the officer had observed a beer in the defendant's vehicle, and the defendant had slurred speech and dilated pupils. For a search which would otherwise be illegal, absent consent, knowledgeable waiver of one's constitutional right not to be searched is guaranteed by Article 3, § 23 of the Mississippi Constitution. However, blood searches which are based upon probable cause are not illegal, and, therefore, the question of the defendant's knowledgeable waiver was not relevant. Longstreet v. State, 592 So. 2d 16, 1991 Miss. LEXIS 840 (Miss. 1991).

A conviction for driving under the influence may be based upon intoxilyzer results if the test is administered in accordance with the proper procedures and the defendant fails to introduce credible evidence which overcomes the statutory presumption of intoxication. Thus, defendants could be convicted on the basis of a breath test which presumed a 2100 to 1 breath to blood ratio where the defendants did not introduce any evidence concerning their particular ratios. Fisher v. Eupora, 587 So. 2d 878, 1991 Miss. LEXIS 669 (Miss. 1991).

6. Jury instructions.

Trial court did not err in giving its instruction on defendant's refusal to submit to a breath test as the instruction tracked the language of Miss. Code Ann. § 63-11-5 (Supp. 2012) and did not violate defendant's U.S. Const. amend. V prosecution against self-incrimination. Merritt v. State, 127 So. 3d 1150, 2013 Miss. App. LEXIS 431 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 14 (Miss. 2014).

A jury instruction that "a person who operates a motor vehicle over the public roads of this state has given his or her implied consent to submit to the test administered using the Intoxilyzer 5000 to determine the person's blood alcohol content" did not improperly emphasize one piece of evidence over the rest, thereby helping the state by implication by focusing the jury's attention on defendant's refusal to submit to the test. Price v. State, 752 So. 2d 1070, 1999 Miss. App. LEXIS 504 (Miss. Ct. App. 1999).

7. Miscellaneous.

Two officers smelled alcohol emanating from defendant's vehicle; he admitted that he had consumed alcohol, and he refused to perform sobriety tests. Under the evidence, defendant was guilty of driving under the influence by virtue of the implied consent law. Havard v. State, 911 So. 2d 991, 2005 Miss. App. LEXIS 697 (Miss. Ct. App. 2005).

A city was not liable to a man who was arrested for public intoxication and placed in a drunk tank, even though he was never given an intoxication test and even though it was later determined that he had in fact suffered a stroke, where there was no evidence that the city had either tacitly or explicitly encouraged the improper arrest and detention of stroke victims on charges of public drunkenness and where there was no showing that the city had been reckless or grossly negligent in its training, supervising, or disciplining of the officers or jailers involved in plaintiff's arrest and detention; although state law required that an intoximeter test must be given to those arrested for driving while intoxicated, such test was not required for those arrested merely for public drunkenness and liability would not attach on the basis of the city's policy against giving the test to persons in plaintiff's situation. Reeves v. Jackson, 608 F.2d 644, 1979 U.S. App. LEXIS 9432 (5th Cir. Miss. 1979).

OPINIONS OF THE ATTORNEY GENERAL

Constable has authority to make arrest for D.U.I., but cannot direct giving of breath test. Compton, March 19, 1992, A.G. Op. #92-0201.

Law enforcement officers may administer blood and urine tests for the purpose of determining the presence of a substance other than alcohol that might impair the person's ability to operate a motor vehicle. Livingston, July 3, 1997, A.G. Op. #97-0364.

A DUI blood sample may be taken from a driver without an arrest or the driver's consent so long as there exists probable cause to make such a search, and it is not necessary to obtain a search warrant prior to taking such a sample. Henry, Aug. 8, 1997, A.G. Op. #97-0464.

If a police officer has probable cause to believe that an individual is driving under the influence on the state fairgrounds in violation of Section 63-11-30, the officer may stop the individual and charge the violator accordingly; however, if the operator of the vehicle refuses to submit to a chemical test, it must be shown that the vehicle was being operated on the public highways, public roads, and streets of the state before the violator can be subjected to the penalties of Section 63-11-5. DeLaughter, Nov. 20, 2000, A.G. Op. #2000-0679.

As long as a reserve officer is a duly commissioned deputy who is properly trained and certified, there is no prohibition against that officer from using the intoxilyzer to test subjects suspected of DUI. Davis, Feb. 28, 2003, A.G. Op. #03-0091.

Certain policies and procedures adopted by the State Crime Laboratory pertaining to breath alcohol testing and blood alcohol testing must be filed with the Secretary of State's Office pursuant to the Administrative Procedures Act; however, portions dealing only with internal operations need not be filed. Huggins, Oct. 24, 2003, A.G. Op. 03-0538.

There is no alternative warning an officer must give an individual stopped for suspected DUI on private property. In order to suspend an individual's driver's license for 90 days who refused an "intoxilyzer" or other chemical intoxication test under Miss. Code Ann. § 63-11-5, the prosecution must show that the vehicle

was operated on the public highways, public roads and streets of Mississippi. Sweat, March 2, 2007, A.G. Op. #07-00085, 2007 Miss. AG LEXIS 79.

RESEARCH REFERENCES

ALR.

Admissibility, in criminal case, of evidence obtained by search by private individual. 36 A.L.R.3d 553.

Admissibility, in criminal cases, of evidence obtained by search conducted by school official or teacher. 49 A.L.R.3d 978.

Driving while intoxicated: duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law. 95 A.L.R.3d 710.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Admissibility in criminal case of blood alcohol test where blood was taken despite defendant's objection or refusal to submit to test. 14 A.L.R.4th 690.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Operation of bicycle as within drunk driving statutes. 73 A.L.R.4th 1139.

Challenges to use of breath tests for drunk drivers based on claim that partition or conversion ratio between measured breath alcohol and actual blood alcohol is inaccurate. 90 A.L.R.4th 155.

Admissibility and sufficiency of extrapolation evidence in DUI prosecutions. 119 A.L.R.5th 379.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 346-349.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 988-991.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 475 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

2 Am. Jur. Proof of Facts 585, Blood Tests.

17 Am. Jur. Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

CJS.

61A C.J.S., Motor Vehicles §§ 1607, 1609.

§ 63-11-7. Authorization of blood test for dead or unconscious accident victims; use of test results.

If any person be unconscious or dead as a result of an accident, or unconscious at the time of arrest or apprehension or when the test is to be administered, or is otherwise in a condition rendering him incapable of refusal, such person shall be subjected to a blood test for the purpose of determining the alcoholic content of his blood as provided in this chapter, if the arresting officer has reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor. The results of such test or tests, however, shall not be used in evidence against such person in any court or before any regulatory body without the consent of the person so tested, or, if deceased, such person's legal representative. However, refusal of release of evidence so obtained by such officer or agency will in criminal actions against such person result in the suspension of his or her driver's license for a period of ninety days as provided in this chapter for conscious and capable persons who have refused to submit to such test. Blood may only be withdrawn under the provisions of Section 63-11-9. It is the intent of this chapter that blood samples taken under this section shall be used exclusively for statistical evaluation of accident causes with safeguards established to protect the identity of such victims and to extend the rights of privileged communications to those engaged in taking, handling and evaluating such statistical evidence.

HISTORY: Codes, 1942, § 8175-10; Laws, 1971, ch. 515, § 10, eff from and after April 1, 1972.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Admissibility of test results.
3. —Criminal Case.

1. In general.

The privilege created by Sections 63-11-7 and 63-11-43 [repealed] to prevent the introduction into evidence of the results of blood alcohol tests taken pursuant to the provisions of the implied consent laws without the consent of the person tested are inconsistent with the Mississippi Rules of Evidence, Rules 501 and 1103, and therefore must yield. Whitehurst v. State, 540 So. 2d 1319, 1989 Miss. LEXIS 136 (Miss. 1989).

2. Admissibility of test results.

Although defendant argued the circuit court committed reversible error when it admitted blood-sample test results into evidence in violation of the statutory privileges afforded in the Implied Consent Act, defendant's constitutional challenge was moot, as his blood was not taken pursuant to the Implied Consent Act. Whitaker v. State, 146 So. 3d 333, 2014 Miss. LEXIS 321 (Miss. 2014), cert. denied, 574 U.S. 1123, 135 S. Ct. 1165, 190 L. Ed. 2d 915, 2015 U.S. LEXIS 707 (U.S. 2015).

Blood alcohol test results were admissible in civil case when performed on driver who died as result of accident, both because decedent's representative waived statutory protection and results of test were submitted in defense of person tested, Miss Code §§ 63-11-7 and 63-11-43 [repealed] (1972) being intended to protect interests of person submitted to blood alcohol test. Clark v. Pascagoula, 507 So. 2d 70, 1987 Miss. LEXIS 2474 (Miss. 1987), overruled, State Farm Mut. Auto. Ins. Co. v. Eakins, 1998 Miss. LEXIS 593 (Miss. Dec. 10, 1998).

Blood alcohol test administered as part of medical treatment is admissible in civil action where driver from whom blood is taken has made contractual waiver of physician-patient privilege. Edwards v. Ellis, 478 So. 2d 282, 1985 Miss. LEXIS 2262 (Miss. 1985).

Where decedent ran into a truck stopped on highway, and where, several hours later, after he had been pronounced dead, a blood sample was taken from his heart and found to contain a blood alcohol level of .17, the trial judge, pursuant to § 63-11-7, properly refused to allow the defense in any way to present to the jury the results of the blood test. Stong v. Freeman Truck Line, Inc., 456 So. 2d 698, 1984 Miss. LEXIS 1812 (Miss. 1984).

3. —Criminal Case.

Even if state failed to comply with Miss. Code Ann. § 63-11-7, defendant's argument that the test results were therefore inadmissible was misplaced since admissibility of evidence is governed by the Mississippi Rules of Evidence, not by statutory enactment. Deeds v. State, 27 So. 3d 1135, 2009 Miss. LEXIS 588 (Miss. 2009), cert. denied, 562 U.S. 836, 131 S.

Ct. 150, 178 L. Ed. 2d 37, 2010 U.S. LEXIS 5807 (U.S. 2010).

The results of a blood alcohol content test, which was performed on a defendant pursuant to § 63-11-7 while he was semiconscious in a hospital, were admissible in a criminal action against the defendant, even though the statute provides that the results of such tests shall not be used in evidence against the person without the person's consent, since the statutory exclusion yielded to the Mississippi Rules of Evidence, under which admission of the blood test results was permissible. Whitehurst v. State, 540 So. 2d 1319, 1989 Miss. LEXIS 136 (Miss. 1989).

Results of blood-alcohol test performed on defendant after automobile accident resulting in death of 2 people were admissible where officers at scene of accident smelled alcohol and saw several beer cans and whiskey bottle on floorboard, at hospital informed defendant that he was being charged with 2 counts of manslaughter, read defendant his rights, and requested and obtained his consent for blood sample; evidence was sufficient to provide probable cause to search for and seize evidence of intoxication; contention of defendant that test results should not have been admissible because evidence indicated he was unable to consent was rejected, although testimony showed that defendant was belligerent and slurred his speech, was unco-operative, and unsuccessfully resisted efforts to procure blood sample. Whitley v. State, 511 So. 2d 929, 1987 Miss. LEXIS 2691 (Miss. 1987).

In a prosecution for involuntary manslaughter arising out of a traffic accident, in which the defendant contended that the deceased caused the accident by suddenly turning into the defendant's lane of traffic, the trial court committed reversible error in refusing to permit the introduction into evidence of the results of the blood alcohol test given to the deceased. This section does not prohibit the use of such evidence, over the objection of the legal representative, in favor of an accused in a criminal trial. McNamee v. State, 313 So. 2d 392, 1975 Miss. LEXIS 1671 (Miss. 1975), overruled, Baker v. State, 391 So. 2d 1010, 1980 Miss. LEXIS 2178 (Miss. 1980).

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Section 63-11-7 makes test results obtained pursuant to 63-11-7 exempt from scope of public records act. Younger Dec. 29, 1993, A.G. Op. #93-0910.

While the medical staff may be immune from liability, a law enforcement officer cannot require the medical staff at a hospital or other medical facility to draw blood from a defendant suspected of violating the implied consent law. However, the county may contract with medical personnel to draw blood in such circumstances. Johnson, Apr. 30, 2004, A.G. Op. 04-0183.

RESEARCH REFERENCES

ALR.

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver. 72 A.L.R.3d 325.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 346-349.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 988-991.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 475 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

2 Am. Jur. Proof of Facts 585, Blood Tests.

17 Am. Jur. Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

CJS.
61A C.J.S., Motor Vehicles §§ 1607-1609.

§ 63-11-8. Testing of motor vehicle operator involved in accident resulting in death.

(1) The operator of any motor vehicle involved in an accident that results in a death shall be tested for the purpose of determining the alcohol content or drug content of such operator's blood, breath or urine. Any blood withdrawal required by this section shall be administered by any qualified person and shall be administered within two (2) hours after such accident, if possible. The exact time of the accident, to the extent possible, and the exact time of the blood withdrawal shall be recorded.

(2) If any investigating law enforcement officer has reasonable grounds to believe that a person is the operator of a motor vehicle involved in an accident that has resulted in a death, it shall be such officer's duty to see that a chemical test is administered as required by this section.

(3) The results of a test administered pursuant to this section may be used as evidence in any court or administrative hearing without the consent of the person so tested.

(4) No person may refuse to submit to a chemical test required under the provisions of this section.

(5) Analysis of blood or urine to determine alcohol or drug content pursuant to this section shall be conducted by the Mississippi Forensics Laboratory or a laboratory whose methods and procedures have been approved by the Mississippi Forensics Laboratory.

HISTORY: Laws, 1995, ch. 540, § 4; Laws, 1996, ch. 527, § 5; Laws, 2015, ch. 452, § 14, eff from and after July 1, 2015.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.
3. Time for test.

1. In general.

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927, 2009 Miss. App. LEXIS 91 (Miss. Ct. App. 2009).

Miss. Code Ann. § 63-11-8, which mandates that a test for determining blood alcohol content be performed on the operator of any motor vehicle involved in an accident resulting in death, was not applicable where defendant was charged under Miss. Code Ann. § 63-11-30(5) for aggravated DUI with injury. Smith v. State, 942 So. 2d 308, 2006 Miss. App. LEXIS 850 (Miss. Ct. App. 2006).

In a prosecution for DUI manslaughter, the results of chemical analysis of a blood sample extracted from the defendant shortly after the accident at issue was properly admitted into evidence, notwithstanding that the blood sample was withdrawn by an uncertified technician trainee who was unable at trial to confirm that the defendant's treating physician had approved the drawing of blood in advance of her work. Jones v. State, 761 So. 2d 907, 2000 Miss. App. LEXIS 157 (Miss. Ct. App. 2000).

Admissibility turns on relevance, not on the timing or documentation of the blood testing. Acklin v. State, 722 So. 2d 1264, 1998 Miss. App. LEXIS 816 (Miss. Ct. App. 1998).

2. Constitutionality.

This section, which mandates that blood be taken from any driver involved in a fatal accident regardless of the existence of probable cause to believe that alcohol or drugs were involved, is unconstitutional, because it requires search and seizure absent probable cause. McDuff v. State, 763 So. 2d 850, 2000 Miss. LEXIS 110 (Miss. 2000).

This section, which mandates that blood be taken from any driver involved in a fatal accident regardless of the existence of probable cause to believe that alcohol or drugs were involved, does not violate the privilege against self-incrimination contained in the Fifth Amendment to the United States Constitution and Article 3, § 26 of the Mississippi Constitution. McDuff v. State, 763 So. 2d 850, 2000 Miss. LEXIS 110 (Miss. 2000).

3. Time for test.

Defendant's conviction of driving under the influence causing death was appropriate because there was no evidence that police officers deliberately delayed defendant's blood alcohol test, as they had acted immediately in obtaining a subpoena and traveling to Memphis to get a blood sample from defendant, and there was no evidence that defendant was prejudiced by the delay. Moreover, while probable cause existed to test defendant, probable cause did not exist to test the other driver. Andino v. State, 125 So. 3d 700, 2013 Miss. App. LEXIS 715 (Miss. Ct. App. 2013).

Court did not err by denying defendant's motion to suppress her blood test results as her blood was not drawn until three hours after the accident because the evidence showed that the officer was not immediately aware that defendant was under the influence, and he was not immediately aware of her involvement in the accident. Further delay was caused by the time it took for the tow truck to arrive, the travel time to the police station, and the travel time to the hospital. Teston v. State, 44 So. 3d 977, 2008 Miss. App. LEXIS 681 (Miss. Ct. App. 2008), cert. dismissed, 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

The results of a blood test performed two and one-half to three hours after an accident were properly introduced into evidence as there was no evidence of deliberate delay on the part of the arresting officers and the time lapse was in no way prejudicial to the defendant. Wash v. State, 790 So. 2d 856, 2001 Miss. App. LEXIS 69 (Miss. Ct. App. 2001).

The administration of a blood test within two and ½ hours after an accident constituted substantial compliance with statute where the delay was caused by travel time to a hospital and waiting for a nurse to obtain permission from her supervisor to perform the test. Wilkerson v. State, 731 So. 2d 1173, 1998 Miss. LEXIS 548 (Miss. 1998).

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An example where four persons were killed in a 32 car pile-up, under Section 63-11-8, such a multi-vehicle accident may be considered to be several "accidents," only one of which accident "resulted in a death." The officer may, through his investigation, determine which drivers were involved in the particular accident that resulted in a death, and limit blood testing to those drivers. Perkins, August 23, 1995, A.G. Op. #95-0563.

Section 63-11-8 does not require a vehicle operator to pay for a blood test. The test is administered in order to provide evidence for a possible prosecution. Costs of prosecution are to be paid for by the county and would include a blood test.

Perkins, August 23, 1995, A.G. Op. #95-0563.

If a law enforcement officer requests a qualified person to withdraw blood under the statute and a qualified person draws blood, the person who is qualified to withdraw blood can not be held civilly or criminally liable as the result of the proper administration of a blood test when requested in writing by a law enforcement officer to administer such a test. Head, April 24, 1998, A.G. Op. #98-0200.

Where a person qualified to withdraw blood refuses to do so, that person may not be charged with the crime under the statute. Head, April 24, 1998, A.G. Op. #98-0200.

If an operator of a motor vehicle involved in an accident that results in a death is taken out of state for treatment, a law enforcement officer may request the out of state medical personnel draw blood to be used to test alcohol or drug content; however, the medical personnel are under no obligation to honor that request. Head, April 24, 1998, A.G. Op. #98-0200.

The operator of any motor vehicle involved in an accident that results in a death must be tested for the purpose of determining the alcohol content or drug content of such operator's blood, breath, or urine, and there is no requirement that an officer have reasonable grounds to believe that the driver is impaired. Mitchell, July 10, 1998, A. G. Op. #98-0329.

RESEARCH REFERENCES

ALR.

Authentication of organic nonblood specimen taken from human body for purposes of analysis. 78 A.L.R.5th 1.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 124 et seq., 346-349.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 982-984, 988-992, 995, 1193.

CJS.

61 C.J.S., Motor Vehicles §§ 1514-1521.

§ 63-11-9. Administration of blood test under § 63-11-7.

Under Section 63-11-7, any qualified person acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

HISTORY: Codes, 1942, § 8175-17; Laws, 1971, ch. 515, § 17; Laws, 1996, ch. 527, § 6, eff from and after July 2, 1996.

JUDICIAL DECISIONS

1. Admissibility of test.

Although defendant argued that the State did not provide evidence that a nurse was qualified to draw defendant's blood pursuant to this section, this issue could be dismissed because the Implied Consent Act was not the basis for obtaining the blood sample. Whitaker v. State, 146 So. 3d 333, 2014 Miss. LEXIS 321 (Miss. 2014), cert. denied, 574 U.S. 1123, 135 S. Ct. 1165, 190 L. Ed. 2d 915, 2015 U.S. LEXIS 707 (U.S. 2015).

Even if the State failed to comply with Miss. Code Ann. § 63-11-9 by failing to identify that the nurse who extracted defendant's blood sample was qualifed to do so, defendant's argument that the blood test results were therefore inadmissible was misplaced, since admissibility of evidence is governed by the Mississippi Rules of Evidence, not by statutory enactment. Deeds v. State, 27 So. 3d 1135, 2009 Miss. LEXIS 588 (Miss. 2009), cert. denied, 562 U.S. 836, 131 S. Ct. 150, 178 L. Ed. 2d 37, 2010 U.S. LEXIS 5807 (U.S. 2010).

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It is within the duties and responsibilities of the sheriff to maintain records related to the accuracy of an intoxilyzer machine that is located within the custody or possession of the sheriff's department. Howell, July 10, 2002, A.G. Op. #02-0379.

RESEARCH REFERENCES

ALR.

Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 347, 348.

§ 63-11-11. Taking of urine specimens.

If the test given under the provisions of this chapter is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

HISTORY: Codes, 1942, § 8175-19; Laws, 1971, ch. 515, § 19, eff from and after April 1, 1972.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the section by substituting "ensure" for "insure." The Joint Committee ratified the correction at its August 10, 2022, meeting.

RESEARCH REFERENCES

ALR.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

False light invasion of privacy – accusation or innuendo as to criminal acts. 58 A.L.R.4th 902.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Authentication of organic nonblood specimen taken from human body for purposes of analysis. 78 A.L.R.5th 1.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 347, 348.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

§ 63-11-13. Right of accused to have test administered by person of his choice; effect of failure to obtain additional test.

The person tested may, at his own expense, have a physician, registered nurse, clinical laboratory technologist or clinical laboratory technician or any other qualified person of his choosing administer a test, approved by the Mississippi Forensics Laboratory created pursuant to Section 45-1-17, in addition to any other test, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by such arrested person shall not preclude the admissibility in evidence of the test taken at the direction of a law enforcement officer.

HISTORY: Codes, 1942, § 8175-18; Laws, 1971, ch. 515, § 18; Laws, 1981, ch. 491, § 2; Laws, 2015, ch. 452, § 15, eff from and after July 1, 2015.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
5. Illustrative cases.

1. In general.

Miss. Code Ann. § 63-11-13 makes clear that test results from persons performing analyses at the behest of the accused may be admitted, and the language in § 63-11-13, regarding "any other test" is comparable to the language in former Miss. Code Ann. § 63-11-39(2), which authorized admission of "any other competent evidence" bearing upon the issue of whether a person was intoxicated; clearly "any other test," properly administered under appropriate procedures and designed to determine the alcohol or drug content of one's blood or urine, constitutes other competent evidence. Jones v. State, 881 So. 2d 209, 2002 Miss. App. LEXIS 869 (Miss. Ct. App. 2002), aff'd, 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

Trial court did not err in refusing to exclude the results of defendant's urine analysis performed by a hospital employee simply because the employee did not hold a valid permit from the State Crime Laboratory (Mississippi) pursuant to Miss. Code Ann. § 63-11-19; because the employee, who had 40 years experience, was clearly qualified to perform the analysis at issue, and defendant did not question the credibility of the test or the procedures used by the employee in performing the analysis, the court found that the test was reasonable and the results admissible under Miss. Code Ann. §§ 63-11-39, 63-11-13. Jones v. State, 881 So. 2d 209, 2002 Miss. App. LEXIS 869 (Miss. Ct. App. 2002), aff'd, 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

Defendant's conviction for vehicular homicide was affirmed where the appellate court found that a hospital employee's analysis of his urine that showed defendant had cocaine in his system at the time of the fatal accident was properly admitted even though the employee was not licensed by the State crime laboratory; while Miss. Code Ann. § 63-11-13 addressed tests offered by the accused, it would constitute an anomaly in the law to allow the accused to present evidence of the test analysis done by a person who was not licensed by the State crime laboratory, while, at the same time, preventing the State from using such analysis. Jones v. State, 2002 Miss. App. LEXIS 185 (Miss. Ct. App. Apr. 9, 2002), op. withdrawn, sub. op., 881 So. 2d 209, 2002 Miss. App. LEXIS 869 (Miss. Ct. App. 2002).

The statute does not provide for notification to be given regarding an individual's right to independent testing. Green v. State, 710 So. 2d 862, 1998 Miss. LEXIS 143 (Miss. 1998).

5. Illustrative cases.

Where defendant exhibited signs of driving under the influence of intoxicating liquor, he was arrested and taken to the correctional facility where he was informed that he had the right to refuse to breathe into the intoxilyzer. The officers were not required to inform defendant that he had the right to obtain his own blood test in support of his defense under Miss. Code Ann. § 63-11-13. Ivy v. City of Louisville, 976 So. 2d 951, 2008 Miss. App. LEXIS 140 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

ALR.

Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 347, 348.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

§ 63-11-15. Availability of information concerning test directed by law enforcement officer to accused or his attorney.

Upon the written request of the person tested, or his attorney, full information concerning the test taken at the direction of the law enforcement officer shall be made available to him or to his attorney.

HISTORY: Codes, 1942, § 8175-20; Laws, 1971, ch. 515, § 20, eff from and after April 1, 1972.

OPINIONS OF THE ATTORNEY GENERAL

A prosecutor or judge should use his or her judgment in deciding whether specific items requested by a defendant are within the scope of full information as intended by this section. If the information is determined to be covered by this section, and is requested by the defendant, such information should be provided to the defendant at no cost. Ringer, Feb. 13, 2004, A.G. Op. 04-0039.

This section is the only statute that addresses discovery in justice court. In that regard, this section only applies to the information concerning the intoxilyzer test taken by the defendant. Any other information sought by a defense attorney in not subject to discovery in justice court. Cobb, May 21, 2004, A.G. Op. 04-0216.

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

§ 63-11-17. Liability for administering test or analysis.

No qualified person, hospital, clinic or funeral home shall incur any civil or criminal liability as the result of the proper administration of a test or chemical analysis of a person's breath, blood or urine when requested in writing by a law enforcement officer to administer such a test or perform such chemical analysis.

HISTORY: Codes, 1942, § 8175-21; Laws, 1971, ch. 515, § 21; Laws, 1973, ch. 354, § 1; Laws, 1996, ch. 527, § 7, eff from and after July 2, 1996.

OPINIONS OF THE ATTORNEY GENERAL

While the medical staff may be immune from liability, a law enforcement officer cannot require the medical staff at a hospital or other medical facility to draw blood from a defendant suspected of violating the implied consent law. However, the county may contract with medical personnel to draw blood in such circumstances. Johnson, Apr. 30, 2004, A.G. Op. 04-0183.

§ 63-11-19. Requirements as to methods of testing and qualifications of test administrators; certification of administrators; testing and certification of accuracy of methods, machines or devices.

A chemical analysis of the person's breath, blood or urine, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the Mississippi Forensics Laboratory created pursuant to Section 45-1-17 and the Commissioner of Public Safety and performed by an individual possessing a valid permit issued by the Mississippi Forensics Laboratory for making such analysis. The Mississippi Forensics Laboratory and the Commissioner of Public Safety are authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the Mississippi Forensics Laboratory. The Mississippi Forensics Laboratory shall not approve the permit required herein for any law enforcement officer other than a member of the State Highway Patrol, a sheriff or his deputies, a city policeman, an officer of a state-supported institution of higher learning campus police force, a security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law of 1978, a national park ranger, a national park ranger technician, a military policeman stationed at a United States military base located within this state other than a military policeman of the Army or Air National Guard or of Reserve Units of the Army, Air Force, Navy or Marine Corps, a marine law enforcement officer employed by the Department of Marine Resources, or a conservation officer employed by the Mississippi Department of Wildlife, Fisheries and Parks. The permit given a marine law enforcement officer shall authorize such officer to administer tests only for violations of Sections 59-23-1 through 59-23-7. The permit given a conservation officer shall authorize such officer to administer tests only for violations of Sections 59-23-1 through 59-23-7 and for hunting related incidents resulting in injury or death to any person by discharge of a weapon as provided under Section 49-4-31.

The Mississippi Forensics Laboratory shall make periodic, but not less frequently than quarterly, tests of the methods, machines or devices used in making chemical analysis of a person's breath as shall be necessary to ensure the accuracy thereof, and shall issue its certificate to verify the accuracy of the same.

HISTORY: Codes, 1942, § 8175-16; Laws, 1971, ch. 515, § 16; Laws, 1978, ch. 526, § 1; Laws, 1981, ch. 491, § 3; Laws, 1988, ch. 568, § 2; Laws, 1991, ch. 577, § 2; Laws, 1995, ch. 620, § 5; Laws, 1999, ch. 585, § 6; Laws, 2006, ch. 553, § 5; Laws, 2015, ch. 452, § 16, eff from and after July 1, 2015.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Cross References — Pearl River Valley Water Supply District Security Officer Law of 1978, see §§ 51-9-171 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Qualifications of administrator and methods of administration.
3. —Particular circumstances.
4. Miscellaneous.

1. In general.

While the State's expert was accepted as an expert in toxicology, there was no testimony that she was in any way involved in the testing of defendant's blood specimen or that she was actively involved in the production of the report and had intimate knowledge of the analyses even though she did not perform the tests first hand, and the trial court erred in admitting the test results without evidence that the expert actually performed the test or participated in its analysis; however, because overwhelming evidence was presented to the jury that defendant was intoxicated, this error was harmless. Debrow v. State, 972 So. 2d 550, 2007 Miss. LEXIS 647 (Miss. 2007).

Consistent with 36 CFR § 4.2, federal law preempts state law on the issue of intoxicated motor-vehicle operators within national park areas, and courts are not bound to follow state law, such as Miss. Code Ann. § 63-11-19, when interpreting 36 CFR § 4.23. United States v. Jackson, 470 F. Supp. 2d 654, 2007 U.S. Dist. LEXIS 4868 (S.D. Miss. 2007), aff'd, 273 Fed. Appx. 372, 2008 U.S. App. LEXIS 7811 (5th Cir. Miss. 2008).

Forensic toxicologist provided testimony on how the gas chromatograph operated and how it was calibrated before and after each test. He also established that the machine was run in accordance with crime lab procedures; thus, defendant's claims that the trial court should not have allowed the admission of the blood test results because the result was not achieved within the methods adopted by the Mississippi Commissioner of Public Safety was without merit. Lawrence v. State, 931 So. 2d 600, 2005 Miss. App. LEXIS 552 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 345 (Miss. 2006).

Certificates of intoxilyzer calibration were an example of a public record, the authentication of which was contemplated by Miss. R. Evid. 901(b)(7); because defendant did not contest that the certificates came from the county jail, they satisfied the authentication requirements of Rule 901(b)(7) and were properly admissible. Pulliam v. State, 856 So. 2d 461, 2003 Miss. App. LEXIS 299 (Miss. Ct. App.), cert. denied, 859 So. 2d 1017, 2003 Miss. LEXIS 595 (Miss. 2003).

Certification of the intoxilyzer machines have to take place at least quarterly. Meeks v. State, 800 So. 2d 1281, 2001 Miss. App. LEXIS 501 (Miss. Ct. App. 2001).

The statutes under the Implied Consent Law allow not only a chemical test or tests of a person's breath, but also other tests of a person's blood or urine for determining alcoholic content; all 3 methods-breath, blood and urine tests-are valid tests for determining alcoholic content in a person's body which would impair that person's ability to operate a motor vehicle. Fulton v. City of Starkville, 645 So. 2d 910, 1994 Miss. LEXIS 533 (Miss. 1994).

2. Qualifications of administrator and methods of administration.

County court did not err in admitting breath-test results because the State met the requirements of the statute during a policy officer's testimony; the officer testified that he waited at least twenty minutes before administering the breath test to defendant, and a two-year permit issued by the Mississippi Department of Public Safety to the officer authorized him to conduct analyses of breath specimens to determine alcohol content. Bratcher v. State, 193 So. 3d 639, 2015 Miss. App. LEXIS 539 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 1268, 2016 Miss. LEXIS 268 (Miss. 2016).

Breath-test results were properly admitted in defendant's trial for vehicular manslaughter while driving under the influence because an officer who conducted the testify was certified, and the officer properly had defendant observed for 20 minutes, although the officer did not personally observe defendant for the full 20 minute period. Hudspeth v. State, 28 So. 3d 600, 2009 Miss. App. LEXIS 244 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 89 (Miss. 2010).

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927, 2009 Miss. App. LEXIS 91 (Miss. Ct. App. 2009).

Defendant's conviction for driving under the influence of alcohol, in violation of 36 CFR § 4.23 was supported by sufficient evidence where testimony showed that the Intoxilyzer machine on which defendant was tested was accurate and the tests on defendant, which showed results of .099 and .084, were properly administered; the certification requirements in Miss. Code Ann. § 63-11-19 did not apply because defendant was convicted under federal law, not Mississippi law. United States v. Jackson, 470 F. Supp. 2d 654, 2007 U.S. Dist. LEXIS 4868 (S.D. Miss. 2007), aff'd, 273 Fed. Appx. 372, 2008 U.S. App. LEXIS 7811 (5th Cir. Miss. 2008).

State had to prove as part of its authenticity burden that defendant's breath test was performed by an individual possessing a valid permit issued by the State Crime Laboratory for making such analysis, Miss. Code Ann. § 63-11-19; the statute, however, was not a rule of evidence, so that evidence "otherwise admissible" would not be excluded because of failure to comply with the statute, especially given that the officer was subject to cross-examination on any and all matters concerning his knowledge and experience with the machine, and the State proved that the officer was certified to perform the breath test in compliance with the statute. Henley v. State, 885 So. 2d 89, 2004 Miss. App. LEXIS 962 (Miss. Ct. App. 2004).

Trial court did not err in refusing to exclude the results of defendant's urine analysis performed by a hospital employee simply because the employee did not hold a valid permit from the State Crime Laboratory (Mississippi) pursuant to Miss. Code Ann. § 63-11-19; because the employee, who had 40 years experience, was clearly qualified to perform the analysis at issue, and defendant did not question the credibility of the test or the procedures used by the employee in performing the analysis, the court found that the test was reasonable and the results admissible under Miss. Code Ann. §§ 63-11-13, 63-11-39. Jones v. State, 881 So. 2d 209, 2002 Miss. App. LEXIS 869 (Miss. Ct. App. 2002), aff'd, 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

State laid sufficient predicate for accuracy of intoxilyzer results in prosecution for felony driving under the influence (DUI), despite failure to produce the original certificate attesting to machine's accuracy, where officer testified that he was certified with state crime lab to run simulator test on intoxilyzer to certify calibration on it. McIlwain v. State, 700 So. 2d 586, 1997 Miss. LEXIS 310 (Miss. 1997).

Prior to admitting results of chemical analysis in prosecution for driving under the influence (DUI), court must determine that proper procedures were followed, that operator of machine was properly certified to perform test, and that accuracy of machine was properly certified. McIlwain v. State, 700 So. 2d 586, 1997 Miss. LEXIS 310 (Miss. 1997).

State is not required, for purposes of admitting certificate of accuracy for intoxilyzer, to present testimony and allow cross-examination of calibrating officer; rather, state must present testimony and allow cross-examination of calibrating officer only in absence of certification of intoxilyzer or where there is genuine issue as to authenticity of certification. McIlwain v. State, 700 So. 2d 586, 1997 Miss. LEXIS 310 (Miss. 1997).

A blood alcohol test is admissible into evidence when performance of the test "substantially complied" with § 63-11-19. Bearden v. State, 662 So. 2d 620, 1995 Miss. LEXIS 503 (Miss. 1995).

A chemical analysis of a person's breath, blood, or urine is deemed valid only when performed according to approved methods, by a person certified to do so, and on a machine certified to be accurate. Certification of the machine must take place at least quarterly. These safeguards ensure a more accurate result in the gathering of scientific evidence through intoxilyzers and are strictly enforced. Where one of the safeguards is deficient, the State bears the burden of showing that the deficiency did not affect the accuracy of the result. Johnston v. State, 567 So. 2d 237, 1990 Miss. LEXIS 562 (Miss. 1990).

3. —Particular circumstances.

Defendant was properly convicted of driving under the influence because he admitted to drinking, had red glassy eyes, smelled of alcohol, and was unsteady on his feet, and the proper foundation was laid to admit the breathalyzer test results into evidence where the trooper was certified to give the test, the machine itself was calibrated, and there was nothing in the record to suggest that the results of the test were invalid because the machine was not calibrated properly. Miller v. State, 152 So. 3d 1184, 2014 Miss. App. LEXIS 690 (Miss. Ct. App. 2014).

Although the urinalysis evidence came under the Miss. Code Ann. § 13-1-21(1) physician-patient privilege, defendant could not rely on the privilege to exclude the incriminating evidence of cocaine in defendant's system where the procedure allegedly failed to comply with Miss. Code Ann. § 63-11-19. Jones v. State, 858 So. 2d 139, 2003 Miss. LEXIS 579 (Miss. 2003).

State provided sufficient evidence regarding calibration of intoxilyzer used to test defendant's blood alcohol level, in prosecution for driving while intoxicated, even if state did not provide actual test cards used in calibration; best evidence rule did not apply where officer responsible for calibration testified at trial and state presented records of results of tests performed. Young v. City of Brookhaven, 693 So. 2d 1355, 1997 Miss. LEXIS 232 (Miss. 1997).

There was substantial compliance with § 63-11-19, and the trial judge did not err in admitting intoxilyzer test results into evidence in a prosecution for negligently causing injury while intoxicated under § 63-11-30, where the police dispatcher who administered the intoxilyzer test had attended a one-day school for intoxilyzer test operators conducted by the Mississippi Highway Patrol and had been issued a permit, she testified that she had administered the test "on hundreds," the intoxilyzer machine had been calibrated by someone from the Highway Safety Patrol a few days before the test was administered on the defendant, the dispatcher followed the checklist provided for machine operators, she told the defendant he had a right to refuse the test, the defendant blew into a mouthpiece attached to the machine until a bell rang, the printout card showed .19 percent, and the dispatcher testified that the defendant appeared to be intoxicated. Estes v. State, 605 So. 2d 772, 1992 Miss. LEXIS 473 (Miss. 1992).

The evidence was sufficient to establish that an officer who administered an intoxilyzer test was certified to operate the intoxilyzer, even though no evidence was introduced to show that the intoxilyzer used by the officer was the same model on which he was certified; the statute only requires that the person performing the test be certified to do so. However, the officer's testimony that the intoxilyzer was calibrated every month was insufficient to meet the calibration requirements of the statute where a certificate of calibrations indicated that the machine was not calibrated every month, there was no evidence to establish that the machine had been calibrated within the statutory period, and the State made no effort to carry its burden that even if the intoxilyzer was not properly certified the deficiency did not affect the accuracy of the test. Strictly enforcing the statutory requirements, there is no support for the accuracy of the results absent evidence of proper certification, and the trial court abused its discretion in finding a sufficient predicate for admitting the results of the intoxilyzer in the testimony of the officer. Johnston v. State, 567 So. 2d 237, 1990 Miss. LEXIS 562 (Miss. 1990).

A city policeman was fully qualified to administer a breath test for alcohol content under § 63-11-19, where he had received training at the Mississippi Highway Safety Patrol under the Mississippi Department of Public Safety on the use of the intoxilyzer and its predecessor machine, the intoximeter, had taken a written examination on which he made a correct score of more than 85 percent, and held a permit from the Department of Public Safety to conduct tests on this machine; furthermore, the result of the test was properly admitted as competent evidence, where the officer precisely followed the procedure recommended by the Department of Public Safety in conducting the examination, the machine had been checked for accuracy only two days prior to the test, and the officer scrupulously followed the Department of Public Safety checklist of steps to take in administering the test, in spite of defendant's claim that the officer failed to determine that defendant's mouth was empty at the time of administering the test. Williams v. State, 434 So. 2d 1340, 1983 Miss. LEXIS 2727 (Miss. 1983), but see Fisher v. Eupora, 587 So. 2d 878, 1991 Miss. LEXIS 669 (Miss. 1991).

4. Miscellaneous.

Where defendant was convicted of DUI, the Intoxilyzer machine used to determine defendant's BAC was calibrated thirteen days prior to its use, and the testing requirements of Miss. Code Ann. § 63-11-19 were satisfied. While the machine was later replaced, the court found that it was working properly when defendant was tested. Dobbins v. City of Starkville, 938 So. 2d 296, 2006 Miss. App. LEXIS 166 (Miss. Ct. App. 2006).

Defendant's conviction for first-offense driving under the influence of alcohol, which was based on an intoxilyzer result, was reversed because the State failed to properly authenticate copies of a page from the intoxilyzer log book and the calibration certificate; the State was required to offer either the testimony of the calibrating officer, the original certificate of calibration, or a certified copy of the certificate as evidence of the machine's accuracy. Jones v. State, 798 So. 2d 592, 2001 Miss. App. LEXIS 265 (Miss. Ct. App. 2001).

When a city's intoxilyzer has been inspected and a certificate of accuracy issued, the municipal clerk's office is fairly seen as the statutorily authorized location for the certificate to be filed. Callahan v. State, 811 So. 2d 420, 2001 Miss. App. LEXIS 91 (Miss. Ct. App. 2001).

Where one of the safeguards in statute governing validity of a chemical analysis of a person's breath, blood, or urine is deficient, state bears burden of showing that deficiency did not affect accuracy of result. McIlwain v. State, 700 So. 2d 586, 1997 Miss. LEXIS 310 (Miss. 1997).

A chemical analysis of defendant's blood performed by an individual not possessing a valid permit issued by the State Board of Health for making such analysis (Code 1972 § 63-11-19) was nevertheless admissible as other competent evidence under Code 1972 § 63-11-39 where evidence detailed in opinion established that test was reasonable. Cutchens v. State, 310 So. 2d 273, 1975 Miss. LEXIS 1902 (Miss. 1975), cert. denied, 423 U.S. 1061, 96 S. Ct. 799, 46 L. Ed. 2d 652, 1976 U.S. LEXIS 1092 (U.S. 1976).

OPINIONS OF THE ATTORNEY GENERAL

Any law enforcement officer permitted to administer a chemical analysis test under this section is authorized to enforce the Alcohol Boating Safety Act within his jurisdiction. Whitmore, May 10, 1995, A.G. Op. #95-0148.

Based on this section, the State Crime Laboratory and the Commissioner of Public Safety have the authority to set the qualifications for individuals to receive a permit to conduct a chemical analysis of a person's breath, blood or urine. The only restriction is that a permit may not be issued to any law enforcement officer except those specifically enumerated in Section 63-11-19. Head, August 2, 1996, A.G. Op. #96-0500.

RESEARCH REFERENCES

ALR.

Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

Challenges to use of breath tests for drunk drivers based on claim that partition or conversion ratio between measured breath alcohol and actual blood alcohol is inaccurate. 90 A.L.R.4th 155.

Authentication of blood sample taken from human body for purposes of determining blood alcohol content. 76 A.L.R.5th 1.

Authentication of organic nonblood specimen taken from human body for purposes of analysis. 78 A.L.R.5th 1.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 347, 348.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

§ 63-11-21. Actions by law enforcement officer upon refusal of driver to submit to test generally.

If a person refuses upon the request of a law enforcement officer to submit to a chemical test of his breath designated by the law enforcement agency as provided in Section 63-11-5, none shall be given, but the officer shall at that point demand the driver's license of the person, who shall deliver his driver's license into the hands of the officer. If a person refuses to submit to a chemical test under the provisions of this chapter, the person shall be informed by the law enforcement officer that the refusal to submit to the test shall subject him to suspension of the privilege to operate a motor vehicle. The officer shall give the driver a receipt for his license on forms prescribed and furnished by the Commissioner of Public Safety. The officer shall forward the driver's license together with a sworn report to the Commissioner of Public Safety stating that he had reasonable grounds and probable cause to believe the person had been operating a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor or any other substance which may impair a person's mental or physical ability, stating the grounds, and that the person had refused to submit to the chemical test of his breath upon request of the law enforcement officer.

HISTORY: Codes, 1942, § 8175-11; Laws, 1971, ch. 515, § 11; Laws, 1981, ch. 491, § 4; Laws, 1983, ch. 466, § 3; Laws, 1991, ch. 480, § 5; Laws, 1996, ch. 527, § 8; Laws, 2013, ch. 489, § 6; Laws, 2016, ch. 503, § 3, eff from and after Oct. 1, 2016.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws, 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross References — Implied consent to chemical test, see § 63-11-5.

Review by commissioner of arresting officer's sworn report, see § 63-11-23.

JUDICIAL DECISIONS

1. In general.

The statutory law providing for prehearing suspension of a driver's license when the driver refuses to submit to a breathalyzer test is not violative of minimum due process requirements. Lavinghouse v. Mississippi Highway Safety Patrol, 620 So. 2d 971, 1993 Miss. LEXIS 255 (Miss. 1993).

OPINIONS OF THE ATTORNEY GENERAL

Under Section 63-11-21, if a person refuses to submit to a chemical test, the officer should inform the person that he is subject to arrest and upon conviction faces the same penalties as one who does submit to the test. The law enforcement office need not provide such a warning if the person does not refuse to submit to a chemical test. See also Section 63-11-30. Jones, November 8, 1996, A.G. Op. #96-0786.

The failure to advise the person as set forth in Section 63-11-21 would not effect the prosecution. This amendment to the code section affords the defendant no additional rights. See also Section 63-11-30. Jones, November 8, 1996, A.G. Op. #96-0786.

Pursuant to Section 63-11-21 it is only necessary for the officer to inform the driver of the consequences if the driver refuses to submit to a chemical test. See also Section 63-11-30. Henderson, November 8, 1996, A.G. Op. #96-0763.

Section 63-11-21 does not require any checklist or form to be filled out regarding the information given to a driver who refuses to submit to a chemical test prior to the driver being charged with D.U.I. Henderson, November 8, 1996, A.G. Op. #96-0763.

The intention of the Legislature under Section 63-11-21 was to ensure that a driver was made fully aware of the consequences the driver faced if he refused to submit to a chemical test when requested by a law enforcement officer. Henderson, November 8, 1996, A.G. Op. #96-0763.

If a defendant is convicted of DUI first offense and he also refused the intoxilyzer test, his driver's license is suspended for two years and 90 days (one year pursuant to Section 63-11-30(2)(a) plus 90 days pursuant to Section 63-11-23(1) plus one year pursuant to Section 63-11-30(4)); the two years and 90 days is reduced to 270 days upon successful completion of MASEP. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

RESEARCH REFERENCES

ALR.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test. 97 A.L.R.3d 852.

Admissibility in criminal case of evidence that accused refused to take test of intoxication. 26 A.L.R.4th 1112.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 115 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 475 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

CJS.

60 C.J.S., Motor Vehicles §§ 391-398.

§ 63-11-23. Review of report of law enforcement officer by Commissioner of Public Safety; notice of suspension; seizure of license where test indicates blood alcohol concentration above specified level; temporary permit to drive; denial of permit; representation of state in proceedings.

(1) **Administrative license suspension for test refusal.** The Commissioner of Public Safety, or his authorized agent, shall review the sworn report by a law enforcement officer as provided in Section 63-11-21.

(a) If upon review the Commissioner of Public Safety, or his authorized agent, finds (i) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been operating a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor or any other substance that may impair a person's mental or physical ability; (ii) that the person refused to submit to the chemical test of the person's breath, blood or urine upon request of the officer; and (iii) that the person was informed that his license and driving privileges would be suspended or denied if he refused to submit to the chemical test of his breath, blood or urine, then the Commissioner of Public Safety, or his authorized agent, shall give notice to the licensee that his license or permit to drive, or any nonresident operating privilege, shall be suspended thirty (30) days after the date of the notice for a period of ninety (90) days if the person has not previously been convicted of or nonadjudicated for a violation of Section 63-11-30, or, for a period of one (1) year if the person was previously convicted or nonadjudicated under Section 63-11-30. If the commissioner or his authorized agent determines that the license or permit should not be suspended, he shall return the license or permit to the licensee.

(b) The notice of suspension shall be in writing and conform to Section 63-1-52.

(c) A person may continue to drive on either an interlock-restricted license or under a drug-testing program if so ordered by a court in the course of a criminal proceeding for a violation of Section 63-11-30.

(2) **Extension or suspension of privilege to drive; request for trial.** (a) If the chemical testing of a person's breath indicates the blood alcohol concentration was eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of the person's blood, breath, or urine, the arresting officer shall seize the license and give the driver a receipt for his license on forms prescribed by the Commissioner of Public Safety and shall promptly forward the license together with a sworn report to the Commissioner of Public Safety. The receipt given a person shall be valid as a permit to operate a motor vehicle for thirty (30) days in order that the defendant may be processed through the court having original jurisdiction and a final disposition had.

(b) If the defendant requests a trial within thirty (30) days and trial is not commenced within thirty (30) days, then the court shall determine if the delay in the trial is the fault of the defendant or his counsel. If the court finds that it is not the fault of the defendant or his counsel, then the court shall order the defendant's privileges to operate a motor vehicle to be extended until the defendant is convicted upon final order of the court.

(c) If a receipt or permit to drive issued under this subsection expires without a trial having been requested as provided in this subsection, then the Commissioner of Public Safety, or his authorized agent, shall suspend the license or permit to drive or any nonresident operating privilege for the applicable period of time as provided in subsection (1) of this section.

(c) If a receipt or permit to drive issued under this subsection expires without a trial having been requested as provided in this subsection, then the Commissioner of Public Safety, or his authorized agent, shall suspend the license or permit to drive or any nonresident operating privilege for the applicable period of time as provided in subsection (1) of this section.

(3) **Offenders driving without a license.** If the person is a resident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety, or his authorized agent, shall deny to the person the issuance of a license or permit for a period of one (1) year beginning thirty (30) days after the date of notice of the suspension.

(4) **Appeal.** It shall be the duty of the municipal prosecuting attorney, county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or if there is not a prosecuting attorney for the municipality or county, the duty of the district attorney to represent the state in any hearing on a de novo appeal held under the provisions of Section 63-11-25, Section 63-11-37 or Section 63-11-30.

(5) **Suspension subsequent to conviction.** Unless the person obtains an interlock-restricted license or the court orders the person to exercise the privilege to operate a motor vehicle only under an interlock-restricted license or while participating in a court-ordered drug-testing program, thirty (30) days after receipt of the court abstract documenting a person's conviction under Section 63-11-30, the Department of Public Safety shall suspend the driver's license and privileges of the person to operate a motor vehicle as follows:

(a) When sentenced under Section 63-11-30(2):

(i) For a first offense: one hundred twenty (120) days;

(ii) For a second offense: one (1) year;

(iii) For a third offense: for the full period of the person's sentence; upon release from incarceration, the person will be eligible for only an interlock-restricted license for three (3) years;

(iv) For a fourth or subsequent offense: for the full period of the person's sentence; upon release from incarceration, the person will be eligible for only an interlock-restricted license for ten (10) years and will further be subject to court-ordered drug testing if the original offense involved operating a motor vehicle under the influence of a drug other than alcohol.

(b) When sentenced under Section 63-11-30(3) (Zero Tolerance for Minors):

(i) For a first offense: one hundred twenty (120) days;

(ii) For a second offense: one (1) year;

(iii) For a third offense occurring within five (5) years, suspend or deny the driving privilege for two (2) years or until the person reaches the age of twenty-one (21), whichever is longer.

(6) **Suspensions.** (a) Notices of suspension given under this section shall be in writing and conform to Section 63-1-52.

(b) Suspensions under this and any other chapter shall run consecutively and not concurrently.

(7) **License reinstatement.** A person is eligible for an unrestricted license when the person has completed an alcohol safety education program as provided in Section 63-11-32, has satisfied all other conditions of law and of the person's sentence or nonadjudication, and is not otherwise barred from obtaining an unrestricted license.

HISTORY: Codes, 1942, § 8175-12; Laws, 1971, ch. 515, § 12; Laws, 1981, ch. 491, § 5; Laws, 1983, ch. 466, § 4; Laws, 1989, ch. 482, § 25; Laws, 1991, ch. 412, § 2; Laws, 1996, ch. 527, § 9; Laws, 1998, ch. 505, § 1; Laws, 2000, ch. 542, § 2; Laws, 2002, ch. 367, § 2; Laws, 2013, ch. 489, § 7; Laws, 2014, ch. 493, § 4; Laws, 2016, ch. 503, § 4, eff from and after Oct. 1, 2016; Laws, 2018, ch. 447, § 5, eff from and after July 1, 2020.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws of 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross References — Right to petition for review of decision of commissioner of public safety, see § 63-11-25.

Additional suspension or denial of license or permit, see § 63-11-30.

Disqualification from driving commercial vehicle for one year if license has been administratively suspended under this section, see § 63-1-216.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.
3. Suspension procedure.
4. Evidence held sufficient.

1. In general.

Statute relied upon by motorist did not support claim that circuit court had subject matter jurisdiction over motorist's petition for reduction of term of driver's license suspension for operating under influence, as statute in question was no longer in effect when motorist filed petition, and additionally statute applied only to Department of Public Safety's decision to suspend license pursuant to statute giving Department discretion whether to suspend license after driver had refused to submit to breath test. Department of Pub. Safety v. Prine, 687 So. 2d 1116, 1996 Miss. LEXIS 62 (Miss. 1996).

Section 63-11-23 is penal in nature and effect, and it will be construed strictly though reasonably against infliction of penalty. State v. Martin, 495 So. 2d 501, 1986 Miss. LEXIS 2686 (Miss. 1986).

2. Constitutionality.

The statutory law providing for prehearing suspension of a driver's license when the driver refuses to submit to a breathalyzer test is not violative of minimum due process requirements. Lavinghouse v. Mississippi Highway Safety Patrol, 620 So. 2d 971, 1993 Miss. LEXIS 255 (Miss. 1993).

3. Suspension procedure.

Fact that police officer arrested driver prior to requesting that driver submit to official breath test did not establish that improper procedures were followed in suspending driver's license for driving under the influence of intoxicating liquor (DUI) refusal, notwithstanding statute requiring finding that person was placed under arrest after refusal to take test; "arrest" as used in statute referred to arrest for DUI, and probable cause to arrest had to exist before test could be requested, so requiring arrest only after test refusal was unworkable and was inconsistent with intent of statute. Sheppard v. Mississippi State Highway Patrol, 693 So. 2d 1326, 1997 Miss. LEXIS 230 (Miss. 1997).

Before the license of one subject to § 63-11-23(2) is effectively suspended, the Commission of Public Safety or his authorized agent must (1) in the appropriate administrative manner, take the affirmative step of suspending that person's license or permit to drive, and (2) give the driver notice of the suspension by registered or certified mail as provided in subsection (1) of the statute. State v. Martin, 495 So. 2d 501, 1986 Miss. LEXIS 2686 (Miss. 1986).

4. Evidence held sufficient.

Sufficient evidence existed to find defendant guilty where although there was some argument that the results of the intoxilyzer test were within the margin of error, no evidence of the margin of error, if any, of the testing procedures was offered and the appellate court could not review the claim; the admissibility of the calibration evidence satisfied the need to prove the accuracy of the intoxilyzer. Pulliam v. State, 856 So. 2d 461, 2003 Miss. App. LEXIS 299 (Miss. Ct. App.), cert. denied, 859 So. 2d 1017, 2003 Miss. LEXIS 595 (Miss. 2003).

OPINIONS OF THE ATTORNEY GENERAL

If an individual has his license suspended under this section prior to going to court, and is subsequently charged with violating § 63-11-40, (driving with license suspended for DUI), an acquittal for the original DUI charge has no effect on the charge for driving with license suspended for DUI. Hester, May 21, 1999, A.G. Op. #99-0242.

The cost associated with impoundment, immobilization, or ignition interlock is a cost of court that should be paid by the defendant upon conviction; if the defendant is indigent, the cost may be borne by the prosecution and the defendant placed on a work program to satisfy the costs. Dantin, July 14, 2000, A.G. Op. #2000-0377.

The method of immobilization is not specified in the law and is left to the discretion of the judge; as such, the judge may tailor the method of immobilization in order to contain the costs incurred by the city or county, i.e., the removal of the tires or car battery or some other part so as to immobilize the vehicle. Dantin, July 14, 2000, A.G. Op. #2000-0377.

If a defendant is convicted of DUI second offense and he also refused the intoxilyzer test, his driver's license is suspended for five years (two years pursuant to Section 63-11-30(2)(b) plus one year pursuant to Section 63-11-23(1) plus two years pursuant to Section 63-11-30(4)); the five years is reduced to three 3 years upon successful completion of chemical dependency treatment at a facility approved by the Department of Mental Health. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

If a defendant is convicted of DUI third offense and he also refused the intoxilyzer test, his driver's license is suspended for 11 years (five years pursuant to Section 63-11-30(2)(c) plus one year pursuant to Section 63-11-23(1) plus five years pursuant to Section 63-11-30(4)); the 11 years is reduced to seven 7 years upon successful completion of chemical dependency treatment at a facility approved by the Department of Mental Health. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

RESEARCH REFERENCES

ALR.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal. 68 A.L.R.4th 776.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense. 52 A.L.R.5th 655.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 146 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 410 et seq.

§ 63-11-25. Appeals from forfeiture, suspension or denial of license by commissioner generally; exercise of driving privilege suspended during pendency of appeal.

If the forfeiture, suspension or denial of issuance is sustained by the Commissioner of Public Safety, or his duly authorized agent pursuant to subsection (1) of Section 63-11-23, upon such hearing, the person aggrieved may file within ten (10) days after the rendition of such decision a petition in the circuit or county court having original jurisdiction of the violation for review of such decision and such hearing upon review shall proceed as a trial de novo before the court without a jury. The petition shall be served upon the Attorney General and the Commissioner of Public Safety. Provided further, that no such party shall be allowed to exercise the driving privilege while any such appeal is pending.

HISTORY: Codes, 1942, § 8175-13; Laws, 1971, ch. 515, § 13; Laws, 1983, ch. 466, § 5; Laws, 1996, ch. 527, § 10, eff from and after July 2, 1996; Laws, 2021, ch. 464, § 4, eff from and after passage (approved April 16, 2021).

Editor's Notes — Laws of 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Amendment Notes — The 2021 amendment, effective April 16, 2021, added the next-to-last sentence.

Cross References — Representation of state in proceedings held under this section, see § 63-11-23.

JUDICIAL DECISIONS

1. In general.

Licensee was entitled to have driver's license suspension hearing conducted as trial de novo, and, thus, licensee should not have been required to present his case first and should not have been party who carried burden of persuasion. Sheppard v. Mississippi State Highway Patrol, 693 So.

2d 1326, 1997 Miss. LEXIS 230 (Miss. 1997).

Circuit court's erroneous placement of burden of proof upon licensee, in driver's license suspension hearing requested by licensee, was not reversible error, where facts were undisputable. Sheppard v. Mississippi State Highway Patrol, 693 So. 2d 1326, 1997 Miss. LEXIS 230 (Miss. 1997).

Driver's alleged confusion regarding belief that Miranda rights applied to chemical testing procedures, following stop for driving under influence of intoxicating liquor (DUI) did not preclude finding that driver refused to submit to chemical testing within meaning of implied consent statute, as statute contained no requirement that such refusal be made with full knowledge of driver's rights and consequences, and driver was informed of his right to refuse test as well as fact that, if he refused test, his license would be suspended for 90 days. Sheppard v. Mississippi State Highway Patrol, 693 So. 2d 1326, 1997 Miss. LEXIS 230 (Miss. 1997).

Statute relied upon by motorist did not support claim that circuit court had subject matter jurisdiction over motorist's petition for reduction of term of driver's license suspension for operating under influence, as statute in question was no longer in effect when motorist filed petition, and additionally statute applied only to Department of Public Safety's decision to suspend license pursuant to statute giving Department discretion whether to suspend license after driver had refused to submit to breath test. Department of Pub. Safety v. Prine, 687 So. 2d 1116, 1996 Miss. LEXIS 62 (Miss. 1996).

The statutory law providing for prehearing suspension of a driver's license when the driver refuses to submit to a breathalyzer test is not violative of minimum due process requirements. Lavinghouse v. Mississippi Highway Safety Patrol, 620 So. 2d 971, 1993 Miss. LEXIS 255 (Miss. 1993).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 154-156.

CJS.

60 C.J.S., Motor Vehicles §§ 434 et seq.

§ 63-11-26. Actions which foreclose judicial review.

When the commissioner of public safety, or his authorized agent, shall suspend the driver's license or permit to drive of a person or shall deny the issuance of a license or permit to a person as provided in Section 63-11-30, the person shall not be entitled to any judicial review of or appeal from the actions of the commissioner. A final conviction under said section shall finally adjudicate the privilege of such convicted person to operate a motor vehicle upon the public highways, public roads and streets of this state.

HISTORY: Laws, 1981, ch. 491, § 9; Laws, 1983, ch. 466, § 6, eff from and after July 1, 1983.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws of 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

§ 63-11-27. Notification of authorities in home state of suspension of nonresident drivers privilege.

When it has been finally determined under the procedures of Sections 63-11-21 through 63-11-25, that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the commissioner, or his duly authorized agent, shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

HISTORY: Codes, 1942, § 8175-14; Laws, 1971, ch. 515, § 14, eff from and after April 1, 1972.

RESEARCH REFERENCES

ALR.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

§ 63-11-29. Repealed.

Repealed by Laws, 1983, ch. 466, § 15, eff from and after July 1, 1983.

§ 63-11-29. [Codes, 1942, §§ 8175-02, 8175-03; Laws, 1971, ch. 515, §§ 2, 3]

Editor's Notes — Former § 63-11-29 made it unlawful for a habitual user of drugs or a person under the influence of drugs to operate a vehicle, and provided penalties for a violation.

§ 63-11-30. Operating a vehicle while under influence of alcohol or other drugs; penalties; zero tolerance for minors; DUI test refusal; aggravated DUI; DUI child endangerment; expunction; nonadjudication.

(1) It is unlawful for a person to drive or otherwise operate a vehicle within this state if the person:

(a) Is under the influence of intoxicating liquor;

(b) Is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle;

(c) Is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or

(d) Has an alcohol concentration in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood, or grams of alcohol per two hundred ten (210) liters of breath, as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter, of:

(i) Eight one-hundredths percent (.08%) or more for a person who is above the legal age to purchase alcoholic beverages under state law;

(ii) Two one-hundredths percent (.02%) or more for a person who is below the legal age to purchase alcoholic beverages under state law; or

(iii) Four one-hundredths percent (.04%) or more for a person operating a commercial motor vehicle.

(2) Except as otherwise provided in subsection (3) of this section (Zero Tolerance for Minors):

(a) **First offense DUI.** (i) Upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within six (6) months of sentencing. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail.

(ii) Suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) A qualifying first offense may be nonadjudicated by the court under subsection (14) of this section. The holder of a commercial driver's license or a commercial learning permit at the time of the offense is ineligible for nonadjudication.

(iv) Eligibility for an interlock-restricted license is governed by Section 63-11-31 and suspension of regular driving privileges is governed by Section 63-11-23.

(b) **Second offense DUI.** (i) Upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a misdemeanor, fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), shall be imprisoned not less than five (5) days nor more than six (6) months and sentenced to community service work for not less than ten (10) days nor more than six (6) months. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain.

(ii) Suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) Eligibility for an interlock-restricted license is governed by Section 63-11-31 and suspension of regular driving privileges is governed by Section 63-11-23.

(c) **Third offense DUI.** (i) For a third conviction of a person for violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections. For any offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain.

(ii) The suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) The suspension of regular driving privileges is governed by Section 63-11-23.

(d) **Fourth and subsequent offense DUI.** (i) For any fourth or subsequent conviction of a violation of subsection (1) of this section, without regard to the time period within which the violations occurred, the person shall be guilty of a felony and fined not less than Three Thousand Dollars ($3,000.00) nor more than Ten Thousand Dollars ($10,000.00), and shall serve not less than two (2) years nor more than ten (10) years in the custody of the Department of Corrections.

(ii) The suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) A person convicted of a fourth or subsequent offense is ineligible to exercise the privilege to operate a motor vehicle that is not equipped with an ignition-interlock device for ten (10) years.

(e) Any person convicted of a second or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse, the person must successfully complete treatment at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee representing the cost of the assessment. Each person who participates in a treatment program shall pay a fee representing the cost of treatment.

(f) The use of ignition-interlock devices is governed by Section 63-11-31.

(3) **Zero Tolerance for Minors.** (a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If the person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b)(i) A person under the age of twenty-one (21) is eligible for nonadjudication of a qualifying first offense by the court pursuant to subsection (14) of this section.

(ii) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined Two Hundred Fifty Dollars ($250.00); the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within six (6) months. The court may also require attendance at a victim impact panel.

(c) A person under the age of twenty-one (21) years who is convicted of a second violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than Five Hundred Dollars ($500.00).

(d) A person under the age of twenty-one (21) years who is convicted of a third or subsequent violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than One Thousand Dollars ($1,000.00).

(e) License suspension is governed by Section 63-11-23 and ignition interlock is governed by Section 63-11-31.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section must complete treatment of an alcohol or drug abuse program at a site certified by the Department of Mental Health.

(4) **DUI test refusal.** In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of the person's breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of the test in any prosecution, shall suffer an additional administrative suspension of driving privileges as set forth in Section 63-11-23.

(5) **Aggravated DUI.** (a) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each victim who suffers death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(b) A holder of a commercial driver's license who is convicted of operating a commercial motor vehicle with an alcohol concentration of eight one-hundredths percent (.08%) or more shall be guilty of a felony and shall be committed to the custody of the Department of Corrections for not less than two (2) years and not more than ten (10) years.

(c) The court shall order an ignition-interlock restriction on the offender's privilege to drive as a condition of probation or post-release supervision not to exceed five (5) years unless a longer restriction is required under other law. The ignition-interlock restriction shall not be applied to commercial license privileges until the driver serves the full disqualification period required by Section 63-1-216.

(6) **DUI citations.** (a) Upon conviction of a violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The court clerk must immediately send a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction or other order of the court, to the Department of Public Safety as provided in Section 63-11-37.

(b) A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section. The Department of Public Safety shall maintain a central database for verification of prior offenses and convictions.

(7) **Out-of-state prior convictions.** Convictions in another state, territory or possession of the United States, or under the law of a federally recognized Native American tribe, of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring within five (5) years before an offense shall be counted for the purposes of determining if a violation of subsection (1) of this section is a second, third, fourth or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) **Charging of subsequent offenses.** (a) For the purposes of determining how to impose the sentence for a second, third, fourth or subsequent conviction under this section, the affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or indictment states the number of times that the defendant has been convicted and sentenced within the past five (5) years for a second or third offense, or without a time limitation for a fourth or subsequent offense, under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third, fourth or subsequent offense of this section.

(b) Before a defendant enters a plea of guilty to an offense under this section, law enforcement must submit certification to the prosecutor that the defendant's driving record, the confidential registry and National Crime Information Center record have been searched for all prior convictions, nonadjudications, pretrial diversions and arrests for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle. The results of the search must be included in the certification.

(9) **License eligibility for underage offenders.** A person who is under the legal age to obtain a license to operate a motor vehicle at the time of the offense and who is convicted under this section shall not be eligible to receive a driver's license until the person reaches the age of eighteen (18) years.

(10) **License suspensions and restrictions to run consecutively.** Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of subsection (1) of this section shall run consecutively to and not concurrently with any other administrative license suspension.

(11) **Ignition interlock.** If the court orders installation and use of an ignition-interlock device as provided in Section 63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section, each device shall be installed, maintained and removed as provided in Section 63-11-31.

(12) **DUI child endangerment.** A person over the age of twenty-one (21) who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars ($10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether the offense was a first, second, third or subsequent offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars ($10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

(13) **Expunction.** (a) Any person convicted under subsection (2) or (3) of this section of a first offense of driving under the influence and who was not the holder of a commercial driver's license or a commercial learning permit at the time of the offense may petition the circuit court of the county in which the conviction was had for an order to expunge the record of the conviction at least five (5) years after successful completion of all terms and conditions of the sentence imposed for the conviction. Expunction under this subsection will only be available to a person:

(i) Who has successfully completed all terms and conditions of the sentence imposed for the conviction;

(ii) Who did not refuse to submit to a test of his blood or breath;

(iii) Whose blood alcohol concentration tested below sixteen one-hundredths percent (.16%) if test results are available;

(iv) Who has not been convicted of and does not have pending any other offense of driving under the influence;

(v) Who has provided the court with justification as to why the conviction should be expunged; and

(vi) Who has not previously had a nonadjudication or expunction of a violation of this section.

(b) A person is eligible for only one (1) expunction under this subsection, and the Department of Public Safety shall maintain a permanent confidential registry of all cases of expunction under this subsection for the sole purpose of determining a person's eligibility for expunction, for nonadjudication, or as a first offender under this section.

(c) The court in its order of expunction shall state in writing the justification for which the expunction was granted and forward the order to the Department of Public Safety within five (5) days of the entry of the order.

(14) **Nonadjudication.** (a) For the purposes of this chapter, "nonadjudication" means that the court withholds adjudication of guilt and sentencing, either at the conclusion of a trial on the merits or upon the entry of a plea of guilt by a defendant, and places the defendant in a nonadjudication program conditioned upon the successful completion of the requirements imposed by the court under this subsection.

(b) A person is eligible for nonadjudication of an offense under this Section 63-11-30 only one (1) time under any provision of a law that authorizes nonadjudication and only for an offender:

(i) Who has successfully completed all terms and conditions imposed by the court after placement of the defendant in a nonadjudication program;

(ii) Who was not the holder of a commercial driver's license or a commercial learning permit at the time of the offense;

(iii) Who has not previously been convicted of and does not have pending any former or subsequent charges under this section; and

(iv) Who has provided the court with justification as to why nonadjudication is appropriate.

(c) Nonadjudication may be initiated upon the filing of a petition for nonadjudication or at any stage of the proceedings in the discretion of the court; the court may withhold adjudication of guilt, defer sentencing, and upon the agreement of the offender to participate in a nonadjudication program, enter an order imposing requirements on the offender for a period of court supervision before the order of nonadjudication is entered. Failure to successfully complete a nonadjudication program subjects the person to adjudication of the charges against him and to imposition of all penalties previously withheld due to entrance into a nonadjudication program. The court shall immediately inform the commissioner of the conviction as required in Section 63-11-37.

(i) The court shall order the person to:

1. Pay the nonadjudication fee imposed under Section 63-11-31 if applicable;

2. Pay all fines, penalties and assessments that would have been imposed for conviction;

3. Attend and complete an alcohol safety education program as provided in Section 63-11-32 within six (6) months of the date of the order;

4.a. If the court determines that the person violated this section with respect to alcohol or intoxicating liquor, the person must install an ignition-interlock device on every motor vehicle operated by the person, obtain an interlock-restricted license, and maintain that license for one hundred twenty (120) days or suffer a one-hundred-twenty-day suspension of the person's regular driver's license, during which time the person must not operate any vehicle.

b. If the court determines that the person violated this section by operating a vehicle when under the influence of a substance other than alcohol that has impaired the person's ability to operate a motor vehicle, including any drug or controlled substance which is unlawful to possess under the Mississippi Controlled Substances Law, the person must submit to a one-hundred-twenty-day period of a nonadjudication program that includes court-ordered drug testing at the person's own expense not less often than every thirty (30) days, during which time the person may drive if compliant with the terms of the program, or suffer a one-hundred-twenty-day suspension of the person's regular driver's license, during which time the person will not operate any vehicle.

(ii) Other conditions that may be imposed by the court include, but are not limited to, alcohol or drug screening, or both, proof that the person has not committed any other traffic violations while under court supervision, proof of immobilization or impoundment of vehicles owned by the offender if required, and attendance at a victim-impact panel.

(d) The court may enter an order of nonadjudication only if the court finds, after a hearing or after ex parte examination of reliable documentation of compliance, that the offender has successfully completed all conditions imposed by law and previous orders of the court. The court shall retain jurisdiction over cases involving nonadjudication for a period of not more than two (2) years.

(e)(i) The clerk shall immediately forward a record of every person placed in a nonadjudication program and of every nonadjudication order to the Department of Public Safety for inclusion in the permanent confidential registry of all cases that are nonadjudicated under this subsection (14).

(ii) Judges, clerks and prosecutors involved in the trial of implied consent violations and law enforcement officers involved in the issuance of citations for implied consent violations shall have secure online access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and 1. is therefore ineligible for another nonadjudication; 2. is ineligible as a first offender for a violation of this section; or 3. is ineligible for expunction of a conviction of a violation of this section.

(iii) The Driver Services Bureau of the department shall have access to the confidential registry for the purpose of determining whether a person is eligible for a form of license not restricted to operating a vehicle equipped with an ignition-interlock device.

(iv) The Mississippi Alcohol Safety Education Program shall have secure online access to the confidential registry for research purposes only.

(15) The provisions of this section are fully applicable to any person who is under the influence of medical cannabis that is lawful under the Mississippi Medical Cannabis Act and in compliance with rules and regulations adopted thereunder which has impaired the person's ability to operate a motor vehicle.

HISTORY: Laws, 1981, ch. 491, § 6; Laws, 1983, ch. 466, §§ 7, 13; Laws, 1989, ch. 565, § 1; Laws, 1991, ch. 480, § 6; Laws, 1992, ch. 500, § 1; Laws, 1994, ch. 340, § 4; Laws, 1995, ch. 540, § 1; Laws, 1996, ch. 527, § 11; Laws, 1998, ch. 505, § 2; Laws, 2000, ch. 542, § 3; Laws, 2002, ch. 367, § 1; Laws, 2004, ch. 503, § 1; Laws, 2007, ch. 438, § 1; Laws of 2012, ch. 510, § 1; Laws, 2013, ch. 489, § 1; Laws, 2014, ch. 493, § 1; Laws, 2015, ch. 478, § 2; Laws, 2016, ch. 503, § 5; Laws, 2017, ch. 428, § 1, eff from and after Oct. 1, 2017; Laws, 2022, ch. 303, § 66, eff from and after passage (approved February 2, 2022).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected references appearing in the amendments made to this section by § 1 of ch. 510, Laws of 2012. The references to "Section

63-11-30(1)" and "Section 63-11-30(2)(a)" were changed to "subsection (1) of this section" and "subsection (2)(a) of this section", respectively, throughout. The Joint Committee ratified these corrections at its August 16, 2012 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of (5)(c) by substituting "ignition-interlock restriction" for "ignitions-interlock restriction." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act".

Laws of 1983, ch. 466, § 12, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Laws of 1994, ch. 340, § 6, as amended by Laws of 1995, ch. 540, § 5, provides as follows:

"SECTION 6. Sections 2 and 3 of this act shall take effect and be in force from and after passage. Section 4 of this act shall take effect and be in force from and after the passage of House Bill No. 438, 1995 Regular Session [Laws, 1995, ch. 540]."

Amendment Notes — The 2022 amendment, effective February 2, 2022, added (15); and made a minor typographical correction.

Cross References — Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Mississippi Medical Cannabis Act, see §§ 41-137-1 et seq.

Juvenile names and addresses of those who violate this section as public records, see § 43-21-261.

Required order denying a driver's license and driving privileges for a child adjudicated delinquent for an offense under § 63-11-30, see § 43-21-605.

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted or nonadjudicated on felony or misdemeanor case under this section, see § 45-1-29.

Guaranteed arrest bond certificate in lieu of cash bail for certain traffic violations, see § 63-9-27.

Warnings of consequences of refusal to submit to chemical tests, see § 63-11-5.

Requirement that person who refuses to submit to chemical test be informed by law enforcement officer that such refusal shall subject such person to penalties provided by this section, see § 63-11-21.

Review by commissioner of public safety of confiscation of license of driver who refused to submit to chemical test, see § 63-11-23.

Finality of commissioner's action in suspending or denying driving privilege of one convicted under this section, see § 63-11-26.

Assessments imposed upon violation of this section to fund Mississippi Alcohol Safety Education Program, see § 63-11-32.

Bond forfeiture operating, for purposes of this section, as a conviction, see § 63-11-37.

Duty of trial judge, upon conviction of driver under this section, to mail copy of abstract of court record to the commissioner of public safety, see § 63-11-37.

Prohibition on suspension by justice courts of fines imposed under the Implied Consent Law, see § 99-19-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

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1. In general.

To be guilty of "operating" a motor vehicle while under the influence of drugs or alcohol, or with an illegally high blood alcohol content, a person must be shown to have driven the vehicle while in that condition by direct proof of reasonable inferences; therefore, defendant's conviction was reversed because it was insufficient to prove "operating" by showing that defendant was intoxicated and sitting behind the wheel of a parked car that was out of gas. Lewis v. State, 831 So. 2d 553, 2002 Miss. App. LEXIS 672 (Miss. Ct. App. 2002).

Subsection (5) does not limit its coverage to those specific parts of the body listed; the use of the phrase includes "any other limb, organ or member of another" person's body permits the application of the subsection to parts of the body other than those specifically listed. Crowley v. State, 791 So. 2d 249, 2000 Miss. App. LEXIS 490 (Miss. Ct. App. 2000).

Disfigurement is not an essential element of the crime of driving under the influence of intoxicating liquor. Harris v. State, 757 So. 2d 195, 2000 Miss. LEXIS 43 (Miss. 2000).

Prosecution of defendant for violating sections of statute prohibiting driving under influence of intoxicating liquor and driving with blood alcohol level of .10% or more was not improper, as charges were not separate crimes but were different methods of establishing same offense, notwithstanding assertion that charges could be defended differently. Young v. City of Brookhaven, 693 So. 2d 1355, 1997 Miss. LEXIS 232 (Miss. 1997).

In a prosecution for DUI maiming under § 63-11-30, the evidence was sufficient to support a finding that the defendant's negligence caused mutilation, disfigurement, or permanent disability of another where his negligence was evidenced by testimony regarding the speed of his vehicle and his failure to stop for a red light, and the victim's fractured pelvis and resulting limp were evidence that the defendant's negligence caused disfigurement of another. Holloman v. State, 656 So. 2d 1134, 1995 Miss. LEXIS 270 (Miss. 1995).

In a prosecution for DUI manslaughter under § 63-11-30, the evidence was sufficient to support a finding that the defendant's culpable negligence caused the death of another where evidence was presented regarding the speed of the defendant's vehicle and his failure to attempt to stop for a red light, and the victim was killed as a result of the ensuing collision. Holloman v. State, 656 So. 2d 1134, 1995 Miss. LEXIS 270 (Miss. 1995).

The language "chemical test or test of his breath," as provided in §§ 63-11-5 and 63-11-30, contemplates the use of an intoxilyzer machine as a proper means of measuring alcohol content of the blood; as long as accuracy, reliability, and all other factors questioning the competency of the test as proof of intoxication are complied with by the administering officers, the proof thereunder is admissible. Fulton v. City of Starkville, 645 So. 2d 910, 1994 Miss. LEXIS 533 (Miss. 1994).

The statutes under the Implied Consent Law allow not only a chemical test or tests of a person's breath, but also other tests of a person's blood or urine for determining alcoholic content; all 3 methods-breath, blood and urine tests-are valid tests for determining alcoholic content in a person's body which would impair that person's ability to operate a motor vehicle. Fulton v. City of Starkville, 645 So. 2d 910, 1994 Miss. LEXIS 533 (Miss. 1994).

The crime of aggravated DUI proscribed in § 63-11-30(4) is a lesser included offense necessarily encompassed under the crime of manslaughter by culpable negligence set forth in § 97-3-47. Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

2. Constitutionality.

The statute does not violate the equal protection clause of the Fourteenth Amendment to the United States Constitution, notwithstanding that persons above and below the age of 21 are treated differently under the statute, since the distinction made is rationally related to the legitimate governmental ends of protecting public safety and prohibiting under-age drinking and driving. Mason v. State, 781 So. 2d 99, 2000 Miss. LEXIS 215 (Miss. 2000).

Subsection (1)(a) of this section does not fail to adequately advise citizens as to how much an individual may drink without subjection to criminal penalties; nor does it fail to provide law enforcement officers with adequate guidance in its enforcement; thus, it is not unconstitutionally vague. Leuer v. City of Flowood, 744 So. 2d 266, 1999 Miss. LEXIS 216 (Miss. 1999).

The fact that the statute carries a criminal sanction greater than that for manslaughter creates no constitutional infirmity. Wilkerson v. State, 731 So. 2d 1173, 1998 Miss. LEXIS 548 (Miss. 1998).

Section 63-11-30, which imposes a maximum 5-year penalty for the operation of a vehicle in violation of the implied consent law coupled with negligently causing the death or mutilation of another, is not arbitrary and does not constitute cruel and unusual punishment. Banks v. State, 525 So. 2d 399, 1988 Miss. LEXIS 235 (Miss. 1988).

3. Construction.

Neither the crime nor the penalty under the statute depends on the identity of the impairing or controlled substance under subsections (1)(b) and/or (c); identity of the impairing or controlled substance is not an essential element of the offense. Valentine v. State, 322 So. 3d 417, 2021 Miss. LEXIS 149 (Miss. 2021).

Proof that a driver was under the influence is proof of impaired driving ability for purposes of subsection (b) of the statute, and the same holds true for subsections (a) and (c); notwithstanding any past belief by the bench and the bar to the contrary, subsection (b) does not require an extra element of proof or provide a heightened standard for demonstrating a violation of the statute. Valentine v. State, 322 So. 3d 417, 2021 Miss. LEXIS 149 (Miss. 2021).

Miss. Code Ann. § 63-11-30(1) distinguishes the charge of driving while under the influence of intoxicating liquor from that of driving while under the influence of another substance that impairs driving ability. Given the distinction in statutory language, where a defendant is charged with driving while under the influence of intoxicating liquor, the State is not obligated to offer proof of impairment of a defendant's driving ability, only proof of his driving under the influence of intoxicating liquor. Christian v. State, 859 So. 2d 1068, 2003 Miss. App. LEXIS 1074 (Miss. Ct. App. 2003).

Inmate's felony conviction under Miss. Code Ann. § 63-11-30(2)(c) was proper, where the inmate's two previous driving-under-the-influence convictions occurred in Georgia; Miss. Code Ann. § 63-11-30(7) permitted the use of out-of-state convictions as predicate offenses under Miss. Code Ann. § 63-11-30(2)(c). Atwell v. State, 848 So. 2d 190, 2003 Miss. App. LEXIS 348 (Miss. Ct. App. 2003).

Statute contained no requirement that the negligence had to be caused by the alcohol; a conviction merely required a negligent act, from which death or injury resulted, simple negligence was enough to support a conviction. Murphy v. State, 798 So. 2d 609, 2001 Miss. App. LEXIS 426 (Miss. Ct. App. 2001), cert. denied, 537 U.S. 1125, 123 S. Ct. 895, 154 L. Ed. 2d 809, 2003 U.S. LEXIS 137 (U.S. 2003).

Subsection (5), pertaining to the death or disfigurement of another, does not require that the negligence of the defendant must be caused by his consumption of alcohol. Ware v. State, 790 So. 2d 201, 2001 Miss. App. LEXIS 87 (Miss. Ct. App. 2001).

Statute providing penalties for operation of vehicle while under influence of intoxicating liquor or other substance provides only for concurrent suspension periods for multiple offenses; time of license suspension begins to run when Commissioner of Public Safety receives abstract of judgment and issues order of suspension, regardless of whether some other period of suspension is also running. Department of Pub. Safety v. Prine, 687 So. 2d 1116, 1996 Miss. LEXIS 62 (Miss. 1996).

Circuit court had subject matter jurisdiction over motorist's petition for reduction of driver's license suspension imposed for four violations of prohibition against operation of vehicle while under influence; petition claimed hardship and asserted that motorist had completed alcohol course, which may have been "treatment" approved by Department of Mental Health. Department of Pub. Safety v. Prine, 687 So. 2d 1116, 1996 Miss. LEXIS 62 (Miss. 1996).

Simple negligence is sufficient for a conviction pursuant to § 63-11-30(4), as the statute requires only negligence, not gross or culpable negligence. Holloman v. State, 656 So. 2d 1134, 1995 Miss. LEXIS 270 (Miss. 1995).

Subsection (4) of § 63-11-30 imposes criminal liability for the negligent operation of a motor vehicle which causes death or injury to another person, subject to the satisfaction of a condition arising out of the conjunctive integration, by subsection (4), of the provisions of subsection (1) of that same statute, making imposition of the penalty for a violation of the statute dependent upon the existence of a concurrent violation of subsection (1) and subsection (4); accordingly, § 63-11-30 imposes criminal liability only if the injury to, or death of, the victim was caused by the defendant's negligent operation of a motor vehicle "while intoxicated." Matter of Slocum v. Jolly (In re Estate of Wright), 637 So. 2d 834, 1994 Miss. LEXIS 281 (Miss. 1994).

4. Charging affidavit or indictment.

While the indictment did not identify the impairing or controlled substance(s) that defendant was alleged to have been under the influence of, it provided him fair and reasonable notice of the charges against him; violation of the statute does not depend on the identity of the impairing or controlled substance that lessens a person's normal ability for clarity and control to operate a motor vehicle, nor do the penalties under depend on the identity of an impairing or controlled substance. Valentine v. State, 322 So. 3d 417, 2021 Miss. LEXIS 149 (Miss. 2021).

Indictment adequately informed defendant of the aggravated driving under the influence (DUI) charge against him because although the indictment did not specify the type of bodily injury the victim allegedly suffered, the indictment referenced subsection (5), which described the type of injuries contemplated for aggravated DUI. Valentine v. State, 322 So. 3d 417, 2021 Miss. LEXIS 149 (Miss. 2021).

Defendant's challenge to her indictment was procedurally barred because defendant failed to raise the issue in the circuit court; the indictment clearly alleged both of the essential elements of the aggravated driving while under the influence statute, and thus, the alleged defect was not "jurisdictional" in nature. Dartez v. State, 271 So. 3d 733, 2018 Miss. App. LEXIS 636 (Miss. Ct. App. 2018).

Defendant had clear notice of the nature of the charges against her because the indictment clearly charged defendant with aggravated driving under the influence (DUI) based on her blood-alcohol concentration, which was still nearly three times the legal limit three hours after the fatal wreck; therefore, the incorrect citation to an inapplicable subsection of the DUI statute was mere "surplusage." Dartez v. State, 271 So. 3d 733, 2018 Miss. App. LEXIS 636 (Miss. Ct. App. 2018).

Under the aggravated driving while under the influence statute, the State is not required to prove a specific act of negligence, only that the death was caused in a negligent manner; if the State is not required to prove a specific act of negligence at trial, it necessarily follows that such specificity is not required in the indictment. Dartez v. State, 271 So. 3d 733, 2018 Miss. App. LEXIS 636 (Miss. Ct. App. 2018).

Indictment for felony driving under the influence in violation of Miss. Code Ann. § 63-11-30(1)(c) was sufficient under Miss. Unif. Cir. & Cty. R. 7.06, because it fully notified defendant of the nature and cause of the accusations against defendant. While the indictment did not specifically state .08 percent, the indictment (1) stated that defendant operated a vehicle while having two one-hundredths percent or more by weight volume of alcohol in defendant's blood; (2) stated that defendant feloniously drove or otherwise operated a vehicle while under the influence of an intoxicating liquor; (3) was headed Felony DUI MCA Section 63-11-30(1)(c); and (4) clearly listed defendant's previous convictions for DUI, which should have put defendant on notice that the State of Mississippi was seeking an enhanced penalty. Winters v. State, 52 So. 3d 1172, 2010 Miss. LEXIS 576 (Miss. 2010).

Defendant's conviction for his third DUI offense within five years, under Miss. Code Ann. § 63-11-30(2)(c), was appropriate because the indictment clearly notified defendant of the State's allegation that he had a .08 percent alcohol content in his blood. Thus, the indictment was legally sufficient. Nelson v. State, 69 So. 3d 50, 2011 Miss. App. LEXIS 333 (Miss. Ct. App. 2011).

Any error that resulted from an allegedly insufficient indictment for felony driving under the influence causing death or disfigurement, in violation of Miss. Code Ann. § 63-11-30(5) (Supp. 2010), was harmless because defendant had fair notice and an opportunity to prepare a defense. While the indictment did not allege a specific basis for defendant's negligence, the appellate court specifically stated that it was not making a finding of insufficiency. Regardless, any finding of insufficiency would have been harmless because discovery showed the possibility to two specific negligent acts: driving on the wrong side of the road and speeding. Taylor v. State, 94 So. 3d 298, 2011 Miss. App. LEXIS 238 (Miss. Ct. App. 2011), cert. denied, 96 So. 3d 732, 2012 Miss. LEXIS 371 (Miss. 2012).

Indictment, which was amended from four counts to one count, of aggravated DUI, Miss. Code Ann. § 63-11-30(5), was proper even though a defendant caused four deaths. Lepine v. State, 10 So. 3d 927, 2009 Miss. App. LEXIS 91 (Miss. Ct. App. 2009).

Traffic citation issued to defendant constituted a sworn affidavit and thus provided jurisdiction to both a municipal court and a circuit court to hear a charge of DUI despite a failure to include a court date as required by Miss. Code Ann. § 63-9-21(3)(c), because defendant had actual knowledge of the date and the citation had been amended to include it. Wildmon v. City of Booneville, 980 So. 2d 304, 2007 Miss. App. LEXIS 672 (Miss. Ct. App. 2007), cert. denied, 979 So. 2d 691, 2008 Miss. LEXIS 188 (Miss. 2008).

Citation charging defendant with driving under the influence of intoxicating liquor in violation of Miss. Code Ann. § 63-11-30 was not defective because it listed the incorrect municipal court address; Miss. Code Ann. § 63-9-21(3)(c) does not require that the address of the municipal court be contained on the citation. Loveless v. City of Booneville, 972 So. 2d 723, 2007 Miss. App. LEXIS 400 (Miss. Ct. App. 2007), cert. dismissed, 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Citation charging defendant with driving under the influence of intoxicating liquor indicated an arraignment date, but did not indicate whether it would be a.m. or p.m.; the omission did not render the citation defective under Miss. Code Ann. § 63-9-21(3)(c). Loveless v. City of Booneville, 972 So. 2d 723, 2007 Miss. App. LEXIS 400 (Miss. Ct. App. 2007), cert. dismissed, 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Fact that an older citation form was issued to defendant in a DUI case did not mean that it was insufficient just because it was not a uniform traffic ticket since the issuing municipality had obtained new tickets; moreover, the law applicable to defendant's case involving the standards for operators of commercial vehicles had not changed. Scott v. City of Booneville, 962 So. 2d 698, 2007 Miss. App. LEXIS 185 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

That an indictment's caption identified the charge as "driving under the influence

(DUI) manslaughter" rather than "DUI negligent death statute," and referenced the wrong subsection of Miss. Code Ann. § 63-11-30, was immaterial, as the indictment made it clear that the inmate was charged with causing the death of his passenger while feloniously and negligently operating a vehicle under the influence of intoxicating liquor, and his guilty plea waived all non-jurisdictional defects in the indictment. Turner v. State, 864 So. 2d 288, 2003 Miss. App. LEXIS 679 (Miss. Ct. App. 2003), cert. denied, 864 So. 2d 282, 2004 Miss. LEXIS 35 (Miss. 2004).

Because the indictment charged defendant with operating "a motor vehicle while under the influence of intoxicating liquor," which was the language of the offense codified at Miss. Code Ann. § 63-11-30(1)(a), the statement adequately informed defendant of the elements that the State was required to prove and the indictment was sufficient as required by Miss. Const. art. 3, § 27. Harris v. State, 830 So. 2d 681, 2002 Miss. App. LEXIS 474 (Miss. Ct. App. 2002), cert. denied, 842 So. 2d 578, 2003 Miss. LEXIS 323 (Miss. 2003).

Because the indictment gave clear notice that the charge was operating "a motor vehicle while under the influence of intoxicating liquor," in violation of Miss. Code Ann. § 63-11-30(1)(a), it was not fatally flawed by the inclusion of the surplus language that defendant "refused to submit to a chemical test of his breath"; the deletion of the surplus language from jury instruction was not an error. Harris v. State, 830 So. 2d 681, 2002 Miss. App. LEXIS 474 (Miss. Ct. App. 2002), cert. denied, 842 So. 2d 578, 2003 Miss. LEXIS 323 (Miss. 2003).

When a defendant is charged with subsequent violations of the statute, an indictment containing evidence of prior convictions should not be read to the jury and the jury should not be made aware of the defendant's prior convictions for the same crime as the one for which he is currently facing trial; the prior convictions are only relevant as to sentencing and should only be admitted during a separate sentencing phase. Strickland v. State, 784 So. 2d 957, 2001 Miss. LEXIS 139 (Miss. 2001).

An indictment charging DUI maiming was sufficient, notwithstanding the assertion that it failed to charge that the defendant's negligent driving caused the accident, where it actually read that the defendant in a negligent manner caused the mutilation of the victim's left arm, as the indictment gave sufficient notice of the charges pending against the defendant. McCollum v. State, 785 So. 2d 279, 2001 Miss. LEXIS 120 (Miss. 2001).

An indictment for driving under the influence of intoxicating liquor was valid where it included the proper code section and subsection number, provided the date, time, and location of the offense, and described the offense as driving negligently while intoxicated, striking the victim's vehicle and causing numerous injuries to her face and body. Harris v. State, 757 So. 2d 195, 2000 Miss. LEXIS 43 (Miss. 2000).

It was plain error to convict and sentence the defendant for a felony DUI conviction rather than a second offense misdemeanor where the first three convictions cited in the indictment occurred more than five years prior to the date of the incident at issue; therefore, the court would reverse and remand for resentencing in accordance with the provisions of subsection (2)(c) of this section in effect at the time of his arrest. Porter v. State, 749 So. 2d 250, 1999 Miss. App. LEXIS 542 (Miss. Ct. App. 1999).

A statutorily sufficient indictment, as measured by § 63-11-30(7), goes beyond the requirements of § 63-11-5(3) and § 63-9-21(3)(b); an indictment in compliance with these statutes and recent holdings by the court is sufficient to charge a defendant with felony DUI and a traffic ticket, citation, or affidavit is not required. Williams v. State, 708 So. 2d 1358, 1998 Miss. LEXIS 120 (Miss. 1998).

Failure to demur to the indictment for felony DUI does not waive a defect not otherwise curable by amendment. Porter v. State, 1998 Miss. App. LEXIS 948 (Miss. Ct. App. Nov. 10, 1998), op. withdrawn, sub. op., 749 So. 2d 250, 1999 Miss. App. LEXIS 542 (Miss. Ct. App. 1999).

An indictment for DUI-third offense, a felony, was sufficient where not only were the convictions and the courts in which they were tried enumerated on the face of the indictment, but the state went further and each abstract of court record showing the defendant's prior convictions for DUI were attached and made a part of the indictment. Weaver v. State, 713 So. 2d 860, 1997 Miss. LEXIS 624 (Miss.), modified, 713 So. 2d 860, 1997 Miss. LEXIS 949 (Miss. 1997).

Affidavit and indictment were sufficient to charge defendant with third offense felony driving under the influence (DUI), and thus, defendant's guilty plea was not invalid on that basis; indictment specifically set forth two prior offenses and convictions, and clearly designated dates, fines imposed, and location of record for each prior conviction. Drennan v. State, 695 So. 2d 581, 1997 Miss. LEXIS 244 (Miss. 1997).

5. Bifurcation.

There is no requirement that the prosecution of a felony DUI comply with the guidelines for bifurcation found in Uniform Rules of Circuit and County Court Practice, Rule 11.03. Williams v. State, 708 So. 2d 1358, 1998 Miss. LEXIS 120 (Miss. 1998).

6. Defenses.

The fact that the defendant was unaware that his continued violations of the statute would subject him to a felony charge did not constitute a defense to DUI-third offense, a felony. Weaver v. State, 713 So. 2d 860, 1997 Miss. LEXIS 624 (Miss.), modified, 713 So. 2d 860, 1997 Miss. LEXIS 949 (Miss. 1997).

7. Admissibility of evidence.

Although defendant argued the circuit court committed reversible error when it admitted blood-sample test results into evidence in violation of the statutory privileges afforded in the Implied Consent Act, defendant's constitutional challenge was moot, as his blood was not taken pursuant to the Implied Consent Act. Whitaker v. State, 146 So. 3d 333, 2014 Miss. LEXIS 321 (Miss. 2014), cert. denied, 574 U.S. 1123, 135 S. Ct. 1165, 190 L. Ed. 2d 915, 2015 U.S. LEXIS 707 (U.S. 2015).

In a case in which defendant was convicted of violating Miss. Code Ann. § 63-11-30(1)(c), the circuit court incorrectly applied the Porter decision. The Porter decision stood for the proposition that in a driving under the influence (DUI) per-se case, defendant could not offer evidence regarding whether or not he was under the influence which would impair his ability to drive a vehicle; the Porter decision did not hold that in a DUI-per-se case, evidence regarding the consumption of alcohol could not be introduced to prove whether or not defendant was at a certain blood alcohol concentration when he or she was driving a motor vehicle. Evans v. State, 25 So. 3d 1054, 2010 Miss. LEXIS 18 (Miss. 2010).

In a case in which defendant was convicted of violating Miss. Code Ann. § 63-11-30(1)(c), defendant could introduce evidence that her BAC was below the legal limit at the time she was driving; Porter v. State, 749 So. 2d 250 (Miss. Ct. App. 1999), which bars a defendant from introducing evidence that her alcohol consumption did not impair her driving, was inapplicable. Evans v. State, 25 So. 3d 1054, 2010 Miss. LEXIS 18 (Miss. 2010).

In a case in which defendant appealed his conviction and sentence for felony driving under the influence (DUI) as a habitual offender pursuant to Miss. Code Ann. § 99-19-81, he argued unsuccessfully that the trial court erred in failing to grant his pretrial motion to suppress evidence because: (1) the police chief had no authority to stop or arrest him, (2) he never committed any offense in the chief's jurisdiction, (3) his arrest occurred when the pursuit to make the arrest began, and (4) he had not committed any felony at that time. When the police chief began his pursuit, it was not a pursuit for the purpose of making an arrest, rather, it was a pursuit to give a courtesy warning; at the time defendant was arrested at his home, he had committed the crime of felony DUI, as well as the crime of driving with a suspended license. Delker v. State, 50 So. 3d 309, 2009 Miss. App. LEXIS 597 (Miss. Ct. App. 2009), aff'd, 50 So. 3d 300, 2010 Miss. LEXIS 529 (Miss. 2010).

Defendant's conviction for DUI, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(c) was inappropriate because the circuit court judgment erred in excluding evidence of defendant's alcohol consumption and the expert testimony of a doctor. The evidence was especially relevant because of the delay between the time that defendant was pulled over and the time that she was tested. Evans v. State, 25 So. 3d 1061, 2008 Miss. App. LEXIS 657 (Miss. Ct. App. 2008), aff'd, 25 So. 3d 1054, 2010 Miss. LEXIS 18 (Miss. 2010).

Defendant's right to a fair trial was not violated by introducing evidence of prior DUI convictions during the guilt phase of a trial because they were an element of the crime of DUI third offense; the state was required to prove all the essential elements of the crime charged. Smith v. State, 950 So. 2d 1056, 2007 Miss. App. LEXIS 111 (Miss. Ct. App. 2007).

Where defendant was taken to a hospital after a two-car collision, the search warrant for a blood draw was invalid because: (1) the officer who requested the search warrant falsely stated in his affidavit that defendant had (a) refused to submit to an "analysis of his breath" after having been offered an opportunity to submit, and (b) been placed under arrest for driving while under the influence, although at that time he had not yet been arrested; and (2) there were no exigent circumstances present at the hospital that would have justified a blood test since defendant was not fleeing, and the officer obviously had time to secure a warrant, albeit an invalid one. As to the admissibility of defendant's statements about having consumed several beers, made to police at the scene of the accident, defendant did not claim that he was in custody at the time, and his statements clearly had probative value, thus the trial court did not abuse its discretion in allowing the statements to be admitted into evidence despite the defendant's argument that he was disoriented, confused, and suffering from shock and retrograde amnesia when he made the statements and they were therefore not reliable. Shaw v. State, 938 So. 2d 853, 2005 Miss. App. LEXIS 987 (Miss. Ct. App. 2005), cert. denied, 937 So. 2d 450, 2006 Miss. LEXIS 602 (Miss. 2006).

Where defendant was charged with and found guilty of felony driving under the influence of alcohol, the trial court did not err in denying defense counsel's motion to suppress evidence of defendant's blood alcohol results, because the warrant authorizing the blood alcohol test was valid. Inter alia, the officer observed defendant's slurred speech and staggered walk, and he noted that defendant's breath smelled of alcohol and defendant actually admitted to having drunk four beers that morning and was unable to recite the alphabet. Dove v. State, 912 So. 2d 1091, 2005 Miss. App. LEXIS 738 (Miss. Ct. App. 2005).

Where defendant was charged with and found guilty of felony driving under the influence of alcohol, the trial court did not err in denying defense counsel's motion to suppress evidence of defendant's prior DUI convictions because those prior arrests were elements of the crime with which defendant was charged. Moreover, the jury was given a cautionary instruction mandating that the prior DUI convictions were not to be considered as evidence against defendant. Dove v. State, 912 So. 2d 1091, 2005 Miss. App. LEXIS 738 (Miss. Ct. App. 2005).

In a criminal trial for a third offense of felony DUI, defendant waived his complaint that the State had failed to prove he had been convicted twice by the Tennessee courts of a violation of Mississippi law. Defendant had no objection to admission of certified abstracts of his prior convictions. Ali v. State, 2004 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 7, 2004), sub. op., op. withdrawn, 928 So. 2d 237, 2006 Miss. App. LEXIS 336 (Miss. Ct. App. 2006).

Defendant's prior DUI convictions were properly included at his trial for felony DUI where, since prior DUI convictions were necessary elements of felony DUI, any other holding would have precluded the State from proving an essential element of the crime, and the circuit court would have breached its duty to instruct the jury on all the essential elements of the crime charged should the prior felony convictions not have been included. Ward v. State, 881 So. 2d 316, 2004 Miss. App. LEXIS 868 (Miss. Ct. App. 2004).

Despite the circuit court's ruling on defendant's motion in limine, the jury further heard the arresting officer's testimony about the results of the portable breath test given at the time of the traffic stop, which was erroneously admitted without a specific limiting or cautionary instruction; further, there was substantial evidence contrary to the State's case, for example, no results were obtained from the Intoxilyzer 5000 tests. In addition, defendant seemed acutely aware of the consequences of mixing alcohol with the prescription medications defendant was taking, and defendant's physician testified that the symptoms of a sudden change in glucose levels in a diabetic could have been mistaken for intoxication. Given the erroneous admission of evidence barred by the motion in limine and the limited evidence supporting the jury's verdict, reversal and remand was required. Cannon v. State, 905 So. 2d 672, 2004 Miss. App. LEXIS 585 (Miss. Ct. App. 2004), rev'd, 904 So. 2d 155, 2005 Miss. LEXIS 256 (Miss. 2005).

Public safety department printout of defendant's driving record was admissible under Miss. R. Evid. 803(8) after being certified as correct by the signature of the custodian of the records, and because the record was under seal, it was self-authenticated pursuant to Miss. R. Evid. 902(1); this printout met Miss. Code Ann. § 63-11-30(2)(c), which requires evidence of two prior driving under the influence convictions of defendant, and no prejudice resulted from the admission of the corroborating justice court record in this regard. Doolie v. State, 856 So. 2d 669, 2003 Miss. App. LEXIS 642 (Miss. Ct. App. 2003).

While medical science may not be able to inform the courts as to exactly what level of particular narcotics must be ingested to safely lead to the conclusion that the user is under the influence of the drug, the similar issue of whether a person is under the influence of alcohol has for many years been routinely submitted to the jury based on evidence other than scientific testing; such determinations can properly be based upon observed behavior and the common understanding of jurors that persons under the influence of certain chemical substances, whether alcohol or narcotics, behave in ways that are different from the average person and thus, there is no basis to draw a distinction between narcotic use and alcohol use and the appellate court declines to do so. Holloman v. State, 820 So. 2d 52, 2002 Miss. App. LEXIS 345 (Miss. Ct. App. 2002).

When a defendant is charged with subsequent violations of the statute, an indictment containing evidence of prior convictions should not be read to the jury and the jury should not be made aware of the defendant's prior convictions for the same crime as the one for which he is currently facing trial; the prior convictions are only relevant as to sentencing and should only be admitted during a separate sentencing phase. Strickland v. State, 784 So. 2d 957, 2001 Miss. LEXIS 139 (Miss. 2001).

Defendant's conviction for first-offense driving under the influence of alcohol, which was based on an intoxilyzer result, was reversed because the State failed to properly authenticate copies of a page from the intoxilyzer log book and the calibration certificate; the State was required to offer either the testimony of the calibrating officer, the original certificate of calibration, or a certified copy of the certificate as evidence of the machine's accuracy. Jones v. State, 798 So. 2d 592, 2001 Miss. App. LEXIS 265 (Miss. Ct. App. 2001).

The repeal of § 63-11-39(2) in 1991 combined with the 1983 amendment to this section nullified the defendant's argument that the trial court erred when it sustained the state's motion in limine and thus denied him the opportunity of offering evidence that his ingestion of alcohol had not impaired his ability to operate his pickup truck. Porter v. State, 749 So. 2d 250, 1999 Miss. App. LEXIS 542 (Miss. Ct. App. 1999).

The repeal of § 63-11-39(2) in 1991 combined with the 1983 amendment to § 63-11-30 nullified the defendant's argument that the trial court erred when it sustained the state's motion in limine and thus denied him the opportunity of offering evidence that his ingestion of alcohol had not impaired his ability to operate his pickup truck. Porter v. State, 1998 Miss. App. LEXIS 948 (Miss. Ct. App. Nov. 10, 1998), op. withdrawn, sub. op., 749 So. 2d 250, 1999 Miss. App. LEXIS 542 (Miss. Ct. App. 1999).

In a prosecution for third offense driving under the influence of alcohol, the court properly denied a motion in limine to prevent evidence of his two prior convictions of DUI from being presented to the jury. Smith v. State, 736 So. 2d 381, 1999 Miss. App. LEXIS 43 (Miss. Ct. App. 1999).

The state must prove the prior charges and convictions of the defendant in order to meet its burden and obtain a conviction for a felony DUI, and, therefore, the trial judge properly admitted evidence of the defendant's prior convictions. Weaver v. State, 713 So. 2d 860, 1997 Miss. LEXIS 624 (Miss.), modified, 713 So. 2d 860, 1997 Miss. LEXIS 949 (Miss. 1997).

Improper admission of evidence regarding use of horizontal gaze nystagmus (HGN) test, in which person's eye movements are evaluated as potential evidence of intoxication, in prosecution for driving while intoxicated, was harmless error, in view of overwhelming evidence against defendant. Young v. City of Brookhaven, 693 So. 2d 1355, 1997 Miss. LEXIS 232 (Miss. 1997).

A defendant's prior convictions were admissible at the sentencing hearing for enhancement of his punishment under § 63-11-30, in spite of his argument that these convictions could not be used because they occurred when he was without counsel, since lack of counsel does not render a conviction arising from a guilty plea "irregular" or otherwise unfit for purposes of sentence enhancement. Ghoston v. State, 645 So. 2d 936, 1994 Miss. LEXIS 547 (Miss. 1994).

In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, the defendant's statement to a police officer that the breathalyzer machine would "probably show I'm in a coma" was essentially a confession that the defendant was drunk, and was therefore admissible into evidence as a voluntary statement where it was made spontaneously after the defendant had been given the Miranda warnings. Ricks v. State, 611 So. 2d 212, 1992 Miss. LEXIS 819 (Miss. 1992).

In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, the admission into evidence under § 63-11-41 of the defendant's refusal to take a breathalyzer test did not violate the Fifth Amendment to the United States Constitution and Article 3, § 26 of the Mississippi Constitution, even though the defendant was not specifically warned that his refusal could be admitted into evidence against him; the penalty of introducing a refusal serves an important state interest in encouraging defendants to submit to a chemical test, and as the refusal is physical instead of testimonial, its introduction into evidence violates neither the Fifth Amendment nor § 26. Ricks v. State, 611 So. 2d 212, 1992 Miss. LEXIS 819 (Miss. 1992).

In a prosecution for driving under the influence of intoxicating liquor (DUI) pursuant to § 63-11-30, 3 prior DUI convictions and one conviction for driving while license suspended were admissible for the purpose of enhancing the defendant's punishment under § 63-11-30 and could be considered for any lesser administrative sanctions included in the statute, such as suspension of one's driver's license, even though the city could not show that the defendant had been represented by counsel or had knowingly and intelligently waived his right to counsel with respect to these previous convictions, where the prior convictions were constitutionally valid in and of themselves; to find otherwise would have the illogical effect of penalizing those defendants who do obtain counsel in misdemeanor cases and of finding a prior constitutionally valid misdemeanor conviction unconstitutional in certain future instances. Sheffield v. Pass Christian, 556 So. 2d 1052, 1990 Miss. LEXIS 35 (Miss. 1990).

8. —Test results.

In case involving driving under the influence manslaughter, a trial court did not abuse its discretion by allowing defendant's blood-test results into evidence because the totality of the circumstances established that defendant provided valid, voluntary consent to provide blood samples for blood-alcohol testing. Defendant's consent was valid until revoked by him or until completion of the blood draw. John v. State, 189 So. 3d 683, 2015 Miss. App. LEXIS 626 (Miss. Ct. App. 2015).

Regarding defendant's conviction for per se driving under the influence, the

State was not required to prove what defendant's blood alcohol concentration was at the time of the accident. Oatis v. State, 146 So. 3d 1015, 2014 Miss. App. LEXIS 477 (Miss. Ct. App. 2014).

Evidence was sufficient to convict defendant for felony DUI because he provided no authority specific to the alleged gaps in the evidence relating to his blood-alcohol test, he could have been convicted without the test results, there was substantial evidence that he was driving while impaired, and, while he argued reasonable doubt from the absence of the certification of the most recent calibration of the machine used to test his blood-alcohol concentration, he failed to pursue his claim. Jefferson v. State, 138 So. 3d 263, 2014 Miss. App. LEXIS 261 (Miss. Ct. App. 2014).

In an aggravated driving under the influence case under Miss. Code Ann. § 63-11-30, even if the State acted in bad faith in disposing of a blood sample a week after a motion to compel its production was filed, defendant's due process rights were not violated when the trial court denied defendant's motion to dismiss the indictment and allowed the State to introduce the results from the blood analysis at trial because defendant was unable to show that the blood sample had exculpatory value that was apparent before it was destroyed where the sample was tested four times and, even giving defendant the benefit of the lowest result from the four tests, defendant's blood-alcohol level was well over the legal limit. Harness v. State, 58 So. 3d 1, 2011 Miss. LEXIS 59 (Miss. 2011).

Defendant's conviction for DUI maiming in violation of Miss. Code Ann. § 63-11-30(5) was proper because he consented to a blood sample, he never objected to the introduction of the blood-analysis evidence during the course of the testimony by a witness with the Mississippi Crime Laboratory, defendant did not object to the admission of testimony by a doctor regarding the amount of other substances found in the blood sample and the impairing effects of the other substances, defendant's objection made at trial did not state with requisite specificity the basis for the objection to the admission of the testimony, and a deputy was permitted to testify as to what he personally observed concerning defendant's written consent to the blood test. Irby v. State, 2010 Miss. LEXIS 423 (Miss. Aug. 12, 2010), op. withdrawn, 2010 Miss. LEXIS 650 (Miss. Dec. 9, 2010), sub. op., 49 So. 3d 94, 2010 Miss. LEXIS 638 (Miss. 2010).

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927, 2009 Miss. App. LEXIS 91 (Miss. Ct. App. 2009).

In an aggravated driving under the influence case, a denial of defendant's motion for a new trial or motion for a directed verdict was proper because the chain of custody for a blood sample was properly shown from the testimony of those individuals who handled the samples; moreover, defendant offered no evidence of tampering or substitution of the evidence. Vaughn v. State, 972 So. 2d 56, 2008 Miss. App. LEXIS 17 (Miss. Ct. App. 2008).

Motion to suppress was properly denied because defendant's Fourth Amendment rights were not violated in a case involving aggravated driving under the influence because there was probable cause for a blood sample taken from defendant based on his behavior after an accident, the fact that he smelled of alcohol and marijuana, and the fact that such items were observed in his car; the blood draw also fell under the exceptions of a search incident to arrest and exigent circumstances. Therefore, the denial of defendant's motion for a new trial or motion for a directed verdict was proper. Vaughn v. State, 972 So. 2d 56, 2008 Miss. App. LEXIS 17 (Miss. Ct. App. 2008).

Miss. Code Ann. § 63-11-8, which mandates that a test for determining blood alcohol content be performed on the operator of any motor vehicle involved in an accident resulting in death within two hours if possible, was not applicable where defendant was charged under Miss. Code Ann. § 63-11-30(5) for aggravated DUI with injury. Smith v. State, 942 So. 2d 308, 2006 Miss. App. LEXIS 850 (Miss. Ct. App. 2006).

Where defendant was tried for a third offense of felony DUI, the trial court did not err in admitting into evidence the results of an Intoxilyzer 5000 breath test showing that defendant's blood alcohol level was 0.090%. The Intoxilyzer result was just one of several pieces of evidence the prosecution used to prove that defendant was "under the influence" as required by Miss. Code Ann. § 63-11-30(1)(a); an officer testified about the results of two field sobriety tests, the odor of an intoxicating beverage and the initial observation of defendant's driving. Ali v. State, 2004 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 7, 2004), sub. op., op. withdrawn, 928 So. 2d 237, 2006 Miss. App. LEXIS 336 (Miss. Ct. App. 2006).

Intoxilyzer results may be admitted into evidence if a proper foundation has been laid. McLaurin v. State, 882 So. 2d 268, 2004 Miss. App. LEXIS 913 (Miss. Ct. App. 2004).

The state cannot use the results of a horizontal gaze nystagmus (HGN) test to show that the defendant was under the influence of intoxicating liquor to prove the requisite elements of subsection (1)(a) and, furthermore, the state cannot attempt to introduce the HGN test as scientific evidence to show a defendant's degree of intoxication; however, the test can still be used as a field sobriety test to establish probable cause to administer the intoxilyzer. Graves v. State, 761 So. 2d 950, 2000 Miss. App. LEXIS 289 (Miss. Ct. App. 2000).

The defendant was entitled to reversal of his conviction and a new trial where the court improperly allowed the introduction of evidence of the horizontal gaze nystagmus test to show intoxication; the state's evidence of guilt was not so overwhelming as to render allowing the improper evidence harmless error. Holmes v. State, 740 So. 2d 952, 1999 Miss. App. LEXIS 321 (Miss. Ct. App. 1999).

Prior to admitting results of chemical analysis in prosecution for driving under the influence (DUI), court must determine that proper procedures were followed, that operator of machine was properly certified to perform test, and that accuracy of machine was properly certified. McIlwain v. State, 700 So. 2d 586, 1997 Miss. LEXIS 310 (Miss. 1997).

State laid sufficient predicate for accuracy of intoxilyzer results in prosecution for felony driving under the influence (DUI), despite failure to produce the original certificate attesting to machine's accuracy, where officer testified that he was certified with state crime lab to run simulator test on intoxilyzer to certify calibration on it. McIlwain v. State, 700 So. 2d 586, 1997 Miss. LEXIS 310 (Miss. 1997).

Horizontal gaze nystagmus (HGN) test, in which person's eye movements are evaluated as potential evidence of intoxication, was scientific test which was not generally accepted within scientific community and could not be used as scientific evidence to prove intoxication or as mere showing of impairment, in prosecution for driving while intoxicated, although test could be used to prove probable cause to arrest and administer intoxilyzer or blood test. Young v. City of Brookhaven, 693 So. 2d 1355, 1997 Miss. LEXIS 232 (Miss. 1997).

There was substantial compliance with § 63-11-19, and the trial judge did not err in admitting intoxilyzer test results into evidence in a prosecution for negligently causing injury while intoxicated under § 63-11-30, where the police dispatcher who administered the intoxilyzer test had attended a one-day school for intoxilyzer test operators conducted by the Mississippi Highway Patrol and had been issued a permit, she testified that she had administered the test "on hundreds," the intoxilyzer machine had been calibrated by someone from the Highway Safety Patrol a few days before the test was administered on the defendant, the dispatcher followed the checklist provided for machine operators, she told the defendant he had a right to refuse the test, the defendant blew into a mouthpiece attached to the machine until a bell rang, the printout card showed .19 percent, and the dispatcher testified that the defendant appeared to be intoxicated. Estes v. State, 605 So. 2d 772, 1992 Miss. LEXIS 473 (Miss. 1992).

A defendant's arrest for driving while intoxicated was legal, and therefore the subsequent intoxilyzer test was not tainted, even though the arresting officer did not observe the defendant driving, where the defendant admitted to the arresting officer that he had been driving an automobile which was involved in an accident, and the defendant was publicly intoxicated in the presence of the officer and others in violation of § 97-29-47. Goforth v. Ridgeland, 603 So. 2d 323, 1992 Miss. LEXIS 348 (Miss. 1992).

9. Sufficiency of evidence.

State presented sufficient evidence to prove to the fact-finder beyond a reasonable doubt that defendant was driving under the influence of marijuana. A reasonable juror could have inferred from a trooper's testimony regarding defendant's poor balance as he walked to the rear of his vehicle and defendant's watery and bloodshot eyes that his driving ability was impaired. Briggs v. State, 337 So. 3d 716, 2022 Miss. App. LEXIS 141 (Miss. Ct. App. 2022).

Looking at the witnesses who testified and the evidence presented at trial, a fact-finder could reasonably determine that defendant had been driving his car while under the influence of marijuana; the trial court found it compelling that defendant admitted to smoking marijuana and that there was marijuana found in his car. Borsi v. State, 339 So. 3d 191, 2022 Miss. App. LEXIS 184 (Miss. Ct. App. 2022).

Sufficient evidence supported defendant's DUI conviction because his truck smelled of alcohol, he had admitted that he had consumed more than one beer, admitted that he had purposefully driven into a flooded road, a reckless act, and admitted that he refused multiple breathalyzer tests. Bullen v. State, — So. 3d —, 2022 Miss. LEXIS 169 (Miss. June 23, 2022).

There was no merit to defendant's claim that the trial court erred by denying his motion for a judgment notwithstanding the verdict because the State presented sufficient evidence to support defendant's conviction for aggravated driving under the influence causing death; defendant drove between seventy and ninety miles per hour in a reckless manner, he admitted that he had smoked marijuana the morning of the wreck, and he tested positive for Delta-9-THC, Topamax, and Xanax. Valentine v. State, 322 So. 3d 417, 2021 Miss. LEXIS 149 (Miss. 2021).

Defendant's conviction for driving under the influence of any other substance was supported by evidence that defendant's eyes were bloodshot, he exhibited eyelid tremors during the Romberg test, he displayed a lack of convergence, and he did not successfully complete the walk-and-turn test or the one-leg-stand test. Furthermore, an officer testified that defendant was the only person in the vehicle who smelled of marijuana, did not smell of alcohol, and a "burnt, green leafy-like substance" in a pipe was found in defendant's pocket. Baughman v. State, 294 So. 3d 108, 2020 Miss. App. LEXIS 102 (Miss. Ct. App. 2020).

There was sufficient evidence to support defendant's conviction for aggravated DUI of intoxicating substances, causing death, including testimony from a toxicologist that defendant was under the influence of methamphetamine and marijuana when his blood was drawn after the accident and that amphetamine was also present in his body. Smith v. State, 292 So. 3d 596, 2020 Miss. App. LEXIS 83 (Miss. Ct. App. 2020).

Trial court did not abuse its discretion in denying defendant's motion for a new trial since the jury found that defendant, driving with a blood-alcohol concentration nearly three times the legal limit, wrecked the car because she was negligent, and there was no contrary evidence that overwhelmed the jury's verdict; the State's accident reconstruction expert concluded that defendant did not maintain the proper lane of travel, overcorrected, and lost control of the car as a result. Dartez v. State, 271 So. 3d 733, 2018 Miss. App. LEXIS 636 (Miss. Ct. App. 2018).

Evidence supported a Miss. Code Ann. § 63-11-30(1) (Rev. 2012) conviction where the testimony indicated that appellant drove erratically, the jury instructions tracked the indictment and statute, and the jury did not have to find the presence of a specific methamphetamine isomer. Pryor v. State, 265 So. 3d 1233, 2018 Miss. App. LEXIS 404 (Miss. Ct. App. 2018), cert. denied, 265 So. 3d 180, 2019 Miss. LEXIS 110 (Miss. 2019).

Sufficient evidence supported defendant's conviction under Miss. Code Ann. § 63-11-30(5) (2013) because (1) defendant's blood alcohol content was over twice the legal limit, (2) the evidence showed defendant operated a vehicle negligently, and (3) expert testimony was not required to show defendant's victim's injuries. Prince v. State, 225 So. 3d 545, 2017 Miss. App. LEXIS 289 (Miss. Ct. App. 2017).

Evidence supported defendant's conviction because officers testified that defendant was swerving the vehicle defendant was driving, that defendant admitted to operating the vehicle while consuming alcohol, that defendant emanated an odor of alcohol, that defendant had glassy, bloodshot eyes and slurred speech, that defendant experienced difficulty turning off the vehicle, that defendant was unsteady, and that defendant failed field sobriety tests. In addition, the prosecution offered into evidence dash-camera footage of the encounter. Longest v. State, 223 So. 3d 799, 2017 Miss. App. LEXIS 241 (Miss. Ct. App. 2017).

Evidence supported defendant's conviction for aggravated driving under the influence because testimonial evidence from witnesses indicated that defendant swerved recklessly while driving a vehicle and was unable to maintain the lane of traffic or control of the vehicle when defendant collided with another vehicle, resulting in the death of a passenger in the other vehicle. Moreover, testimony showed that defendant exhibited the side effects of Xanax, including disorientation, confusion, slurred speech, pinpoint pupils, diaphoretic, and syncope. Roberts v. State, 229 So. 3d 1060, 2017 Miss. App. LEXIS 610 (Miss. Ct. App. 2017).

Evidence that defendant used his right-turn indicator at an intersection before making a left turn, hit the fog line multiple times within a short distance, failed to move his car completely off the road when he was pulled over by the officer, and, at the scene of the traffic stop, exhibited slurred speech, bloodshot eyes, poor balance, smelled strongly of alcohol, and failed two field sobriety tests was sufficient to support defendant's conviction for felony driving under the influence. Clemons v. State, 199 So. 3d 670, 2016 Miss. LEXIS 345 (Miss. 2016).

Evidence that defendant drove recklessly through a checkpoint after being instructed to stop, a deputy smelled an odor of alcohol coming from defendant's vehicle, defendant admitted to drinking wine, and a portable breath test was positive was sufficient to support defendant's conviction for common-law DUI. Schlepphorst v. State, 201 So. 3d 517, 2016 Miss. App. LEXIS 126 (Miss. Ct. App.), cert. denied, 203 So. 3d 1134, 2016 Miss. LEXIS 418 (Miss. 2016).

Officer's testimony that defendant was speeding and weaving in the road, that he smelled alcohol in defendant's vehicle and on his breath, and defendant's admission to having taken NyQuil along with his insistence that he had not consumed alcohol was sufficient to support defendant's DUI conviction. Fancher v. State, 185 So. 3d 1066, 2016 Miss. App. LEXIS 65 (Miss. Ct. App. 2016).

Evidence was sufficient to support a conviction for driving under the influence under this statute because, although defendant's speech was not slurred, he admitted to drinking, smelled of alcohol, had glassy, bloodshot eyes, and failed to perform the field sobriety tests adequately; moreover, the conviction was not against the weight of the evidence because the fact that defendant was calm and cooperative and did not exhibit balance issues other than during the field sobriety tests did not negate a finding of intoxication. Nolan v. State, 182 So. 3d 484, 2016 Miss. App. LEXIS 21 (Miss. Ct. App. 2016).

Evidence was sufficient to convict defendant of driving under the influence of marijuana because the officer observed defendant's vehicle weave twice before pulling him over; defendant's eyes were bloodshot when he exited his vehicle, he failed the lack-of-convergence test, he exhibited eyelid tremors during the Romberg test, and he did not successfully complete the walk-and-turn test or finger-to-nose test; defendant exhibited 12 indicators that he was under the influence of marijuana while undergoing a drug evaluation; and a forensic toxicologist testified that defendant's blood tested positive for the active metabolite of marijuana, meaning that the drug would have had an impairing effect on defendant when he was pulled over. Warwick v. State, 179 So. 3d 1069, 2015 Miss. LEXIS 582 (Miss. 2015).

In case involving driving under the influence manslaughter, a guilty verdict was not against the overwhelming weight of the evidence where there were alcoholic beverage containers found inside of a vehicle wrecked in a creek, defendant admitted that he consumed alcohol prior to the accident, defendant's blood-alcohol level was .18 percent, and the cause of death for the passengers was drowning. John v. State, 189 So. 3d 683, 2015 Miss. App. LEXIS 626 (Miss. Ct. App. 2015).

Evidence was sufficient to support defendant's DUI conviction where the officer testified that she speeding and failed to completely stop at a stop sign, he smelled alcohol coming from inside the vehicle, defendant's eyes were bloodshot and glassy, her speech was slurred, she admitted she had consumed alcohol that evening, a wine bottle one-fourth full was found inside the vehicle, and a preliminary breath test tested positive for alcohol. Robinette v. State, 189 So. 3d 675, 2015 Miss. App. LEXIS 593 (Miss. Ct. App. 2015).

Prosecution presented sufficient evidence that defendant was driving under the influence of marijuana because a police observed that defendant had dilated pupils, reddened eyes, and slurred speech, and defendant exhibited eyelid and leg tremors while performing a sobriety test; defendant's blood tests revealed the presence of active metabolites for marijuana,and he admitted to smoking marijuana twenty minutes prior to encountering the officer. Parish v. State, 176 So. 3d 781, 2015 Miss. LEXIS 529 (Miss. 2015).

Jury's return of a general verdict finding defendant guilty of felony driving under the influence was of no significance where the evidence was sufficient to support a verdict under either Miss. Code Ann. § 63-11-30(1)(a) or (c) (Supp. 2014). Campbell v. State, 164 So. 3d 519, 2015 Miss. App. LEXIS 269 (Miss. Ct. App. 2015).

Evidence was sufficient to support defendant's conviction because the officers who arrived on the scene found defendant's vehicle positioned halfway in the street and halfway on a curb, with several garbage cans strewn about the adjacent yard, and witnessed defendant sitting in the driver's seat of his vehicle with the key in the ignition. They also testified that defendant was unable to walk, talk, or stand without extreme difficulty and stated that they smelled an intoxicating substance. Pittman v. City of Starkville, 151 So. 3d 1056, 2014 Miss. App. LEXIS 680 (Miss. Ct. App. 2014).

Although defendant argued that the evidence was insufficient to support his conviction for driving under the influence (DUI) because he had an adequate explanation for each factor that the trooper considered in charging him with DUI, this argument in effect challenged, not the sufficiency of the evidence presented by the State during trial, but the weight and credibility given by the circuit court to that evidence. The issue of the weight of the evidence presented against defendant during trial was not before the appellate court. Terrell v. State, 151 So. 3d 277, 2014 Miss. App. LEXIS 657 (Miss. Ct. App. 2014).

Evidence was sufficient to convict defendant of felony driving under the influence (DUI) because the evidence showed that defendant operated a motor vehicle while impaired as an officer testified that defendant admitted he had been drinking earlier that night, that he smelled of alcoholic beverages, had bloodshot eyes, appeared nervous, and acted obstinately, and that he failed or could not complete all three field sobriety tests; and because, although there was some conflicting data, defendant's name, social security/driver's license number, day and month of birth, sex, race, and city of residence appeared on both abstracts of conviction for prior DUI offenses committed in the previous five years. Jefferson v. State, 151 So. 3d 261, 2014 Miss. App. LEXIS 652 (Miss. Ct. App. 2014).

Although, alone, the fact that defendant admitted to consuming a small amount of alcohol may not have been sufficient evidence for common law driving under the influence (DUI), the State presented other evidence, including evidence that defendant's speech was slurred, he had to lean on his vehicle for support, he seemed uncoordinated, he had bloodshot eyes, and he smelled of alcohol; therefore, the evidence was sufficient to support defendant's conviction for felony DUI, third offense. Moore v. State, 151 So. 3d 200, 2014 Miss. LEXIS 562 (Miss. 2014).

In view of evidence that defendant admitted that he had consumed alcoholic beverages about an hour prior to being stopped, his admission that he had an open beer container in his car, his slurred speech, and his acknowledgement that the only field sobriety test he passed was the one-leg-stand test, the evidence was sufficient to sustain defendant's common law driving under the influence conviction. Platt v. State, 151 So. 3d 236, 2014 Miss. App. LEXIS 621 (Miss. Ct. App. 2014).

Since the jury could have convicted defendant of either common-law driving under the influence (DUI) or per se DUI, and the evidence was legally sufficient for either crime, the jury's return of a general verdict was of no significance. Oatis v. State, 146 So. 3d 1015, 2014 Miss. App. LEXIS 477 (Miss. Ct. App. 2014).

There was sufficient evidence for a jury to find defendant guilty of every element of common-law driving under the influence; looking at the evidence presented at trial, a jury could reasonably find that defendant had been driving his car while under the influence of alcohol. Oatis v. State, 146 So. 3d 1015, 2014 Miss. App. LEXIS 477 (Miss. Ct. App. 2014).

Evidence showed that a reasonable factfinder could have found beyond a reasonable doubt that defendant committed the crime of DUI, first offense, under Miss. Code Ann. § 63-11-30(1)(a) and she did so under such circumstances that every element of the offense existed given a police officer's observations, defendant's demonstrated impairment during a field sobriety test, and a video recording of defendant's traffic stop. Oglesby v. City of Madison, 151 So. 3d 1022, 2014 Miss. App. LEXIS 440 (Miss. Ct. App. 2014).

In a prosecution of defendant for driving under the influence, first offense, there was ample evidence of slurred speech, the smell of alcohol, and failed field sobriety tests. Further, defendant admitted to drinking beer, and stated he was about five on a subjective intoxication scale of one to ten. Krueger v. State, 147 So. 3d 887, 2014 Miss. App. LEXIS 336 (Miss. Ct. App. 2014).

Where a defendant appealed her conviction and sentence for violating Miss. Code Ann. § 63-11-30(5), the evidence presented established that defendant was under the influence, and the evidence of her erratic and dangerous driving established that she was driving negligently and that such driving resulted in the death of a passenger in another car. There was no error in the denial of her motions for a judgment notwithstanding the verdict or for a new trial. Faulkner v. State, 131 So. 3d 1240, 2014 Miss. App. LEXIS 52 (Miss. Ct. App. 2014).

Although defendant produced evidence that his truck's power steering had been replaced, the manner in which he handled an incident he blamed on his power steering going out (failing to stop to inform anyone of the incident) supported a finding that defendant was under the influence at the time he hit mailboxes and a boat. Chapman v. State, 126 So. 3d 959, 2013 Miss. App. LEXIS 808 (Miss. Ct. App. 2013).

Evidence supported defendant's conviction of felony driving under the influence causing death because (1) surveillance videos showed that defendant consumed six beers at a casino in a two hour period; (2) defendant, upon leaving the casino, turned defendant's vehicle into an oncoming vehicle; (3) a passenger in the other vehicle was killed; (4) a police officer testified that defendant showed signs of intoxication; and (5) defendant's blood contained .14 percent concentration of alcohol. Andino v. State, 125 So. 3d 700, 2013 Miss. App. LEXIS 715 (Miss. Ct. App. 2013).

Sufficient evidence was presented to allow a reasonable and fair-minded juror to find that defendant operated a motor vehicle under circumstances indicating that he was impaired by alcohol because defendant testified that he had consumed alcohol on the day he was arrested, and the State presented testimony that several empty beer cans and a half-full beer can were found in his car and that he smelled like alcohol when he was pulled over. Young v. State, 119 So. 3d 309, 2013 Miss. LEXIS 392 (Miss. 2013).

There was not a sufficient factual basis, pursuant to Miss. Unif. Cir. & Cty. R. 8.04, to support defendant's guilty plea to driving under the influence (DUI) manslaughter and DUI mayhem because there was no factual basis that defendant had been driving in the county where the accident occurred, that defendant was impaired by controlled substances while defendant was driving, and that defendant performed a negligent act that caused one child's death and another child's serious bodily injury in an auto accident. Porter v. State, 126 So. 3d 68, 2013 Miss. App. LEXIS 479 (Miss. Ct. App. 2013).

Evidence supported defendant's driving under the influence conviction because defendant admitted to having been drinking, defendant's performance on field sobriety tests suggested that defendant was impaired, and a video of defendant at a police department waiting to take an Intoxilyzer breath exam depicted defendant as unsteady, eventually losing balance and falling off a stool, while defendant presented part of the video of what defendant alleged was a seizure, without any other support. Carlson v. City of Ridgeland, 131 So. 3d 1220, 2013 Miss. App. LEXIS 474 (Miss. Ct. App. 2013), cert. denied, 132 So. 3d 579, 2014 Miss. LEXIS 112 (Miss. 2014).

Evidence was sufficient to support defendant's driving under the influence conviction where two police officers smelled alcohol emitting from defendant's vehicle, defendant exhibited physical signs of impairment during field sobriety tests, and defendant refused to submit to an Intoxilyzer test, which was admissible pursuant to Miss. Code Ann. § 63-11-41. Lobo v. City of Ridgeland, 135 So. 3d 148, 2013 Miss. App. LEXIS 300 (Miss. Ct. App. 2013).

Evidence was sufficient to convict defendant of DUI, first offense, even without the results of a breathalyzer test, where the arresting officer testified defendant admitted to drinking five alcoholic beverages, he smelled like alcohol, his speech was slurred, he swayed while standing, and his eyes were bloodshot and watery. Ludwig v. State, 122 So. 3d 1229, 2013 Miss. App. LEXIS 313 (Miss. Ct. App. 2013).

Trial court did not err in denying defendant's motion for judgment notwithstanding the verdict because ample evidence was offered in the form of testimony from the sole testifying witness, a police officer, with regard to defendant's condition on the morning in question; the officer's observations of defendant during the field-sobriety tests were ample proof that defendant's ability to operate her motor vehicle had been impaired by her admitted consumption of alcohol. Huhn v. City of Brandon, 121 So. 3d 947, 2013 Miss. App. LEXIS 331 (Miss. Ct. App. 2013).

Evidence was sufficient to support defendant's conviction for driving under the influence maiming, in violation of Miss. Code Ann. § 63-11-30(5), although defendant's blood sample was not positive for alcohol, where both a victim and a deputy testified that defendant smelled of alcohol, one of the victim's testified that defendant was driving in the wrong lane and an alarming speed, one of the victims suffered permanent disabilities as a direct result of the accident, and defendant's blood analysis revealed significant levels of alprazolam and hydrocodone. Irby v. State, 49 So. 3d 94, 2010 Miss. LEXIS 638 (Miss. 2010).

Evidence was sufficient to convict appellant of driving under the influence, under Miss. Code Ann. § 63-11-30(1)(a), (c), because appellant admitted to having several drinks that night, a portable breathalyzer test (PBT) indicated that appellant was probably intoxicated, a police officer testified that appellant displayed signs of intoxication while performing the field-sobriety tests, and the signs from the tests, the PBT results, and the videotape all corroborated most of the officer's testimony and supported his belief that appellant was intoxicated. Barrow v. State, 121 So. 3d 935, 2013 Miss. App. LEXIS 170 (Miss. Ct. App. 2013).

Although defendant argued that the prosecution failed to prove beyond a reasonable doubt that defendant's breath-alcohol content was .08 percent or greater at the time that defendant was driving, because a doctor provided retrograde-extrapolation testimony that defendant's blood-alcohol content would have been .03 percent at the time of the traffic stop of defendant, the county court judge acted within its discretion when it found that the doctor's testimony was not credible. McMurtry v. State, 105 So. 3d 395, 2012 Miss. App. LEXIS 531 (Miss. Ct. App. 2012).

Evidence was sufficient to support defendant's conviction for common law DUI under Miss. Code Ann. § 63-11-30(1)(a) (Rev. 2004) as it showed that defendant admitted to the officer who stopped his vehicle that he had drunk two beers while he was driving, that he also admitted that he had drunk liquor and beer earlier in the day, that the officer smelled a strong odor of alcohol coming from defendant and observed defendant's glassy eyes, and that defendant refused to field sobriety test and the chemical test. Evidence that defendant refused the chemical test was admissible pursuant to Miss. Code Ann. § 63-11-41 (Rev. 2004) and Miss. R. Evid. 402. Ellis v. State, 77 So. 3d 1119, 2011 Miss. App. LEXIS 223 (Miss. Ct. App. 2011), cert. denied, 78 So. 3d 906, 2012 Miss. LEXIS 25 (Miss. 2012).

Sufficient evidence supported defendant's conviction for felony driving under the influence causing death or disfigurement, in violation of Miss. Code Ann. § 63-11-30(5) (Supp. 2010), where a witness testified that the witness and the victim were standing near the side of the road when defendant, who was intoxicated, left her lane of travel, drifted left into the opposite lane, and continued to drift left off of the road, where she hit and killed the victim. Taylor v. State, 94 So. 3d 298, 2011 Miss. App. LEXIS 238 (Miss. Ct. App. 2011), cert. denied, 96 So. 3d 732, 2012 Miss. LEXIS 371 (Miss. 2012).

Substantial evidence supported defendant's conviction for driving under the influence and causing the death of another under Miss. Code Ann. § 63-11-30(5), as defendant was exceeding the speed limit, defendant did not brake before the accident, and defendant's blood-alcohol level was over the legal limit. Beecham v. State, 2010 Miss. App. LEXIS 667 (Miss. Ct. App. Dec. 14, 2010), op. withdrawn, sub. op., 108 So. 3d 402, 2011 Miss. App. LEXIS 642 (Miss. Ct. App. 2011).

Defendant's conviction for DUI maiming in violation of Miss. Code Ann. § 63-11-30(5) was appropriate because the overwhelming weight of the evidence supported a guilty verdict. The other driver testified that, as she drove over a hill, she saw defendant's truck in her lane driving toward her at an alarming speed, resulting in a collision; there was also testimony that defendant smelled of alcohol and although his blood sample was not positive for the presence of alcohol, it did test positive for other substances that affected one's ability to operate a motor vehicle. Irby v. State, 2010 Miss. LEXIS 423 (Miss. Aug. 12, 2010), op. withdrawn, 2010 Miss. LEXIS 650 (Miss. Dec. 9, 2010), sub. op., 49 So. 3d 94, 2010 Miss. LEXIS 638 (Miss. 2010).

Defendant's conviction for DUI, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(a), was supported by the evidence because the circuit court did not err in considering evidence of the smell of alcohol and the presence of beer cans in defendant's truck; defendant admitted consuming at least "a couple" of beers. Knight v. State, 14 So. 3d 76, 2009 Miss. App. LEXIS 484 (Miss. Ct. App. 2009).

In defendant's trial for vehicular manslaughter while driving under the influence, a jury was presented with evidence that defendant's blood-alcohol concentration was three times the legal limit; testimony was presented from an officer that defendant admitted in an interview on the night of the accident that she believed her vehicle had crossed the centerline of the road just before the collision; and evidence was presented that there was no other reasonable cause of the victim's death. Hudspeth v. State, 28 So. 3d 600, 2009 Miss. App. LEXIS 244 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 89 (Miss. 2010).

Evidence was sufficient to sustain defendant's conviction under Miss. Code

Ann. § 63-11-30 because, based on defendant's level of hydrocodone in her system, the State's expert opined that defendant had to have been impaired at the time of the accident. The expert testified that a person could be impaired at any dosage no matter how small, but that defendant's level of hydrocodone demonstrated significant impairment. Teston v. State, 44 So. 3d 977, 2008 Miss. App. LEXIS 681 (Miss. Ct. App. 2008), cert. dismissed, 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

Evidence was sufficient to convict defendant of three counts of driving under the influence of alcohol (DUI) maiming because (1) the State established that defendant consumed alcohol prior to the wreck and was drinking at the time of the wreck; (2) defendant swerved and crossed the center line immediately prior to the wreck; (3) several witnesses testified to the presence of alcohol, including beer cans and a partially consumed bottle of vodka in defendant's vehicle, and that the inside of his vehicle smelled of alcohol; and (4) four hours after the wreck, defendant's blood alcohol content was .07% Gilpatrick v. State, 991 So. 2d 130, 2008 Miss. LEXIS 393 (Miss. 2008).

Defendant's argument, in his motion for new trial and on appeal, that the verdict convicting him of felony driving under the influence was against the overwhelming weight of the evidence was without merit, because the appellate court had to accept the evidence which supported the verdict as true; the evidence included the testimony of one officer that defendant's speech was slurred and that he had poor balance, and the testimony of two other officers that his eyes were red and that he smelled of alcohol. Brooks v. State, 999 So. 2d 408, 2008 Miss. App. LEXIS 390 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 852, 2009 Miss. LEXIS 48 (Miss. 2009).

Evidence was sufficient for a rational jury to find defendant guilty of vehicular homicide beyond a reasonable doubt because the State presented evidence to show that defendant ran a stop sign; it was undisputed that the victim's death was a result of the collision with defendant, and defendant admitted to drinking that night. Moreover, officers discovered an open beer can on the floorboard of defendant's car, and his blood alcohol content was 0.22. Smith v. State, 981 So. 2d 1025, 2008 Miss. App. LEXIS 275 (Miss. Ct. App. 2008).

During a traffic stop, the officer smelled alcohol, defendant exhibited slurred speech, admitted he had been drinking, and the Breathalyzer showed that he was well above the legal limit; a second officer had to carry defendant to the patrol car. Despite conflicting testimony at trial, the evidence was sufficient to sustain defendant's conviction for driving under the influence of intoxicating liquor in violation of Miss. Code Ann. § 63-11-30(1). Ivy v. City of Louisville, 976 So. 2d 951, 2008 Miss. App. LEXIS 140 (Miss. Ct. App. 2008).

There was sufficient evidence to support a verdict of guilty of driving under the influence, first offense, under Miss. Code Ann. § 63-11-30(1), because (1) a circuit court found that there was sufficient, circumstantial evidence that defendant was operating a vehicle under § 63-11-30 because defendant admitted that he was headed home; (2) the circuit court accepted an officer's testimony that he watched defendant exit the vehicle from the driver's side, that he smelled alcoholic beverages, and that defendant displayed signs of intoxication, such as his slurred speech and unsteadiness on his feet; (3) it was a reasonable inference from the evidence presented that defendant had driven the car in violation of § 63-11-30; and (4) the results of an Intoxilyzer and defendant's behavior witnessed by the officer were admitted into evidence. Stuckey v. State, 975 So. 2d 271, 2008 Miss. App. LEXIS 112 (Miss. Ct. App. 2008).

Evidence was sufficient to sustain a conviction for operating a motor vehicle under the influence of alcohol because, upon arriving at the scene of the accident, a witness testified that defendant was the only individual present, defendant admitted that he was the driver of the truck, and both deputies concluded that defendant was driving under the influence based upon the witness's statement, the absence of any other occupants at the scene, the presence of scattered open beer cans, and the distinct scent of alcohol on defendant's breath. Murray v. State, 967

So. 2d 1222, 2007 Miss. LEXIS 618 (Miss. 2007).

Defendant's convictions for driving under the influence of an intoxicating liquor in violation of Miss. Code Ann. § 63-11-30(1)(a), careless driving, and driving without a seatbelt were appropriate because defendant failed to raise any of the issues he complained of on appeal in his motion for a directed verdict or new trial and because the facts of the case provided sufficient evidence to convict. Jones v. State, 958 So. 2d 840, 2007 Miss. App. LEXIS 423 (Miss. Ct. App. 2007).

Evidence was sufficient to convict defendant of DUI first offense because: (1) an officer observed marijuana on defendant's clothing, noted that defendant's eyes were bloodshot, and remarked that defendant appeared to be particularly nervous; (2) the officer testified that defendant stated that he had smoked marijuana a short time before the stop; (3) although defendant testified and gave a different account of the events, the court, as the fact finder, was entitled to believe whatever testimony it found most credible; and (4) nothing about the officer's allowing defendant to drive away from the scene affected whether defendant was actually under the influence when he was stopped initially. Beal v. State, 958 So. 2d 254, 2007 Miss. App. LEXIS 379 (Miss. Ct. App. 2007).

Where a police officer testified that he noticed a strong smell of alcohol coming from defendant, that defendant had glazed and bloodshot eyes, and his speech was slurred, and defendant also failed field sobriety tests, the evidence was sufficient to support defendant's conviction for driving under the influence of intoxicating liquor under Miss. Code Ann. § 63-11-30(1)(a). Loveless v. City of Booneville, 958 So. 2d 230, 2007 Miss. App. LEXIS 347 (Miss. Ct. App. 2007).

Where defendant's blood alcohol content was over the legal limit, and while there was no eyewitness testimony that defendant in fact drove the car that hit the victim, there was sufficient circumstantial evidence to convict defendant of a DUI homicide under Miss. Code Ann. § 63-11-30(1)(c) and (5) because: (1) the early morning time and rural location of the collision allowed the jury to form a reasonable inference that defendant drove the car that hit the victim; (2) the jury could have found based on the time and location that it was unlikely that defendant would have been walking in that area; (3) the jury could have reasonably inferred that defendant was at the scene of the collision because he drove one of the two cars involved in the collision and would not have been able to leave the scene of the accident; (4) the jury could have found that defendant's proximity to the collision and his status as the sole non-emergency personnel present indicated his involvement in the collision; (5) defendant told an officer that he could not remember how the collision happened, not that he did not know how the collision occurred; (6) defendant never mentioned anyone else who could have possibly been driving; and (7) pursuant to Miss. R. Evid. 701, the officer testified that he concluded that defendant was driving based on his presence, the presence of emergency responders, and common sense. Travis v. State, 972 So. 2d 674, 2007 Miss. App. LEXIS 342 (Miss. Ct. App. 2007), cert. denied, 973 So. 2d 244, 2008 Miss. LEXIS 1 (Miss. 2008).

Miss. Code Ann. § 63-11-30(2)(c) requires that the state prove that the first and second offenses were "committed" within five years of the third offense, and the only way to establish this fact is for the state to introduce evidence of the date the first and second offenses were committed; evidence of only the conviction, which does not also contain the date the offense was committed, is not sufficient. Smith v. State, 950 So. 2d 1056, 2007 Miss. App. LEXIS 111 (Miss. Ct. App. 2007).

Because the state did not prove the date of offense for a prior DUI charge, a conviction for felony third offense DUI was not supported by the evidence since there was no proof that two prior convictions were committed within five years of the third offense; however, a remand was appropriate for sentencing under Miss. Code Ann. § 63-11-30(2)(b) since it was undisputed that defendant had violated § 63-11-30(1). Smith v. State, 950 So. 2d 1056, 2007 Miss. App. LEXIS 111 (Miss. Ct. App. 2007).

Trial court did not err in denying defendant's motion for a new trial after he was convicted of third offense felony driving under the influence, in violation of Miss. Code Ann. § 63-11-30(1)(a) and (c), where a reasonable juror could have found defendant guilty based on the evidence presented; the arresting officers testified that they observed defendant unsteady on his feet, with red, watery eyes, a dazed stare, and slurred speech. Starkey v. State, 941 So. 2d 899, 2006 Miss. App. LEXIS 827 (Miss. Ct. App. 2006).

Defendant's motion for a new trial was properly denied where the state presented sufficient evidence from which a jury could reasonably conclude that he was under the influence of intoxicating liquor to the degree that his motor skills necessary to properly operate a vehicle were impaired; under Miss. Code Ann. § 63-11-30(1)(a) and (b), the state was not required to prove that he had a certain blood-alcohol content. Bates v. State, 950 So. 2d 220, 2006 Miss. App. LEXIS 755 (Miss. Ct. App. 2006).

Defendant's motion for a new trial on his driving under the influence charge was properly denied because a trooper's testimony, defendant's intoxilyzer test, and a uniform traffic ticket revealed that defendant registered a breath-alcohol content of 0.13 percent. McLendon v. State, 945 So. 2d 372, 2006 Miss. LEXIS 548 (Miss. 2006), cert. denied, 551 U.S. 1145, 127 S. Ct. 3008, 168 L. Ed. 2d 727, 2007 U.S. LEXIS 8338 (U.S. 2007).

Defendant's motion for judgment notwithstanding the verdict was properly denied because there was legally sufficient evidence for the trial court to find defendant guilty of DUI; it was established that defendant had a breath-alcohol content of 0.13 percent through the testimony of an officer, a printout from a completed intoxilyzer test, and a uniform traffic ticket. McLendon v. State, 945 So. 2d 372, 2006 Miss. LEXIS 548 (Miss. 2006), cert. denied, 551 U.S. 1145, 127 S. Ct. 3008, 168 L. Ed. 2d 727, 2007 U.S. LEXIS 8338 (U.S. 2007).

There was sufficient evidence for a driving under the influence conviction, even though there was no scientific evidence of intoxication because an officer's testimony regarding defendant's conduct, as well as the reading on a breath test and his refusal to cooperate with an Intoxilyzer test, showed that he was intoxicated; the officer did not have qualify as an expert to so testify. Ouzts v. State, 947 So. 2d 1005, 2006 Miss. App. LEXIS 698 (Miss. Ct. App. 2006).

Evidence was sufficient to support defendant's conviction for a third offense for DUI in violation of Miss. Code Ann. § 63-11-30(1) because several witnesses saw defendant in an intoxicated state, an officer observed defendant driving, defendant refused the breath test and defendant had two previous DUI convictions. McCool v. State, 930 So. 2d 465, 2006 Miss. App. LEXIS 400 (Miss. Ct. App. 2006).

Appellate court affirmed defendant's conviction in violation of Miss. Code Ann. § 63-11-30 because an officer was not required to read defendant his Miranda rights when the officer first started speaking to defendant about an accident as defendant was not in custody at that time, and defendant's blood alcohol level was .108. Levine v. City of Louisville, 924 So. 2d 643, 2006 Miss. App. LEXIS 189 (Miss. Ct. App. 2006).

Defendant's conviction for driving under the influence pursuant to Miss. Code Ann. § 63-11-30(1)(a) was affirmed, even though the Intoxilyzer results were suppressed, as the officer's testimony regarding defendant's erratic driving, smell of alcohol, and the failure of sobriety tests was sufficient to convict defendant. Further, it was irrelevant that defendant was initially charged under § 63-11-30(1)(c) as both subsections (1)(a) and (1)(c) charged defendant with the same crime. Deloach v. City of Starkville, 911 So. 2d 1014, 2005 Miss. App. LEXIS 670 (Miss. Ct. App. 2005).

Evidence was sufficient to convict defendant under Miss. Code Ann. § 63-11-30(1) where there was no evidence that anyone but defendant had been driving the van and defendant admitted to the officer that he had been drinking and had consumed Xanax pills within the previous 24 hours, which impaired his ability to operate the van; the verdict was not against the overwhelming weight of the evidence. Turner v. State, 910 So. 2d 598, 2005 Miss. App. LEXIS 135 (Miss. Ct. App. 2005).

Verdict finding defendant guilty of DUI manslaughter under Miss. Code Ann.

§ 63-11-30 was not against the weight of the evidence where investigating officers at the accident scene testified to statements that defendant made about how much alcohol he had consumed before the accident; photographs of the accident scene showed that there were empty beer cans inside defendant's truck and all around the site of the accident; other photographs also showed an unopened six pack of beer inside defendant's truck; and officers testified that the unopened six pack was cold, and, therefore, very likely purchased close in time to the accident. Testimony of the officers also showed that there was a trail of empty beer cans leading from the point where defendant's truck started to flip to the point where it landed. Cowart v. State, 910 So. 2d 726, 2005 Miss. App. LEXIS 218 (Miss. Ct. App. 2005) (Miss. Ct. App. – 2005).

Verdict of felony DUI, third offense, was consistent with the weight of the evidence where defendant was observed driving south in a northbound lane and after being stopped defendant asked to talk to a particular officer for help with that DUI. In addition, three officers testified to the alcohol on defendant's breath and his bloodshot eyes and a doctor, on cross-examination, refuted the possibility that hypoglycemia could have caused the odor of alcohol on defendant's breath. Cannon v. State, 904 So. 2d 155, 2005 Miss. LEXIS 256 (Miss. 2005).

In a prosecution of defendant for vehicular homicide, there was sufficient evidence that defendant was driving a truck at the time of an accident in which his girlfriend's son was killed, even though no witnesses saw defendant driving; defendant's girlfriend testified that defendant emphatically refused to allow her son to drive the truck, and the girlfriend witnessed defendant approach the driver's side and her son approach the passenger's side. Dunaway v. State, 919 So. 2d 67, 2005 Miss. App. LEXIS 300 (Miss. Ct. App. 2005), cert. dismissed, 920 So. 2d 1008, 2005 Miss. LEXIS 652 (Miss. 2005), cert. denied, 921 So. 2d 1279, 2006 Miss. LEXIS 35 (Miss. 2006).

Record showed that the officer found defendant slumped over the steering wheel with the motor running and that when defendant finally woke up, he was disoriented. Similarly, the officer testified that he could smell a strong odor of alcohol emanating from defendant, that defendant staggered, was very incoherent and admitted to having consumed three beers; even without the breath test, which defendant refused, there was ample evidence to support defendant's conviction for driving under the influence and defendant's motion for judgment notwithstanding the verdict was properly denied. McDonald v. City of Aberdeen, 906 So. 2d 774, 2004 Miss. App. LEXIS 1143 (Miss. Ct. App. 2004).

Defendant was properly convicted of DUI based on a breathalyzer test given to him during a traffic stop indicating an alcohol content of .151. The trial court was permitted to enhance his punishment based on his prior DUI convictions. McLaurin v. State, 882 So. 2d 268, 2004 Miss. App. LEXIS 913 (Miss. Ct. App. 2004).

Evidence was sufficient to convict defendant of driving under the influence, first offense, where defendant exhibited signs of intoxication in front of a police officer, the intoxilyzer test was positive for alcohol consumption, and defendant, at the station, refused on two occasions to give a breath sample for analysis by an intoxilyzer machine. Knight v. City of Aberdeen, 881 So. 2d 926, 2004 Miss. App. LEXIS 894 (Miss. Ct. App. 2004).

State presented evidence that when stopped at a roadblock, defendant had a strong odor of alcohol on his breath, his speech was slurred, he had trouble walking to the back of the vehicle, and a breath alcohol test showed a blood alcohol level of .188; reasonably minded jurors had substantial credible evidence, upon which to find defendant guilty beyond a reasonable doubt of DUI. Graham v. State, 878 So. 2d 162, 2004 Miss. App. LEXIS 54 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 922 (Miss. 2004).

Trial court properly found defendant guilty of driving under the influence of intoxicating liquor; although the State was not obligated to offer proof on impairment of defendant's driving ability, a police officer testified that defendant ran a stop sign and failed to turn off his high beams as he passed the officer. Christian v. State, 859 So. 2d 1068, 2003 Miss. App. LEXIS 1074 (Miss. Ct. App. 2003).

Trial court properly denied defendant's motion for a directed verdict under Miss. Code Ann. § 63-11-30(1). The State offered proof that defendant ran a stop sign and did not dim his headlights when an officer passed his car, that the officer smelled the odor of alcohol coming from defendant's vehicle and saw two six-packs of beer inside the car, that defendant was belligerent and hostile to the officer, and that defendant refused to take an intoxilyzer test at the jail. Christian v. State, 859 So. 2d 1068, 2003 Miss. App. LEXIS 1074 (Miss. Ct. App. 2003).

Where defendant was found asleep behind the wheel of defendant's parked car, defendant's statement to the deputy that defendant had consumed some beer prior to driving the vehicle to its then location, in conjunction with the deputy's observations of defendant and the results of the intoxilyzer test, provided sufficient evidence that defendant was guilty of operation of a motor vehicle while under the influence of intoxicating liquor. Holloway v. State, 860 So. 2d 1244, 2003 Miss. App. LEXIS 1139 (Miss. Ct. App. 2003).

Defendant's conviction for driving under the influence, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(a), was proper where there was probable cause for the stop as she had repeatedly crossed over the center line and that constituted careless driving pursuant to Miss. Code Ann. § 63-3-1213; thus, there was probable cause to believe that a traffic offense had been committed and defendant was properly stopped for further police action. Saucier v. City of Poplarville, 858 So. 2d 933, 2003 Miss. App. LEXIS 1025 (Miss. Ct. App. 2003).

Defendant's challenge to the sufficiency of the evidence basically asserted that the victims' careless conduct had made the accident unavoidable and that his driving while intoxicated was not a contributing factor to the accident; however, it was not necessary for the State to prove that an intoxicating liquor was a proximate cause or a proximate contributing cause of a death, and the jury was entitled to find that defendant had committed an act of negligence when he chose to driving while intoxicated and caused the death of another. Campbell v. State, 858 So. 2d 177, 2003 Miss. App. LEXIS 1000 (Miss. Ct. App. 2003).

Evidence was sufficient to support defendant's conviction of felony driving under the influence (DUI) in violation of Miss. Code Ann. § 63-11-30(1)(a); a trained DUI officer observed defendant's vehicle weaving at least three times; after defendant stopped, the officer noticed that defendant smelled of alcohol, had slurred speech, and bloodshot eyes; defendant failed a field sobriety test; and defendant refused to give an adequate breath sample for the intoxilyzer test. Doolie v. State, 856 So. 2d 669, 2003 Miss. App. LEXIS 642 (Miss. Ct. App. 2003).

Trial court did not err in finding that sufficient probable cause existed for the discovery of defendant's DUI violation, where the underlying charge for possession of beer, which led to the revealing search and seizure, was dismissed; where the officer testified that an open container was in defendant's vehicle and defendant admitted he had been drinking, and the officer smelled an intoxicating substance on defendant's breath, the presence of beer provided sufficient probable cause to conduct a search of defendant and his vehicle. Mayo v. State, 843 So. 2d 739, 2003 Miss. App. LEXIS 346 (Miss. Ct. App. 2003).

Evidence was sufficient to support defendant's conviction under Miss. Code Ann. § 63-11-30, in effect on October 7, 1999, because there was evidence that defendant was driving while intoxicated, that defendant did not stop at a stop sign before entering an intersection at a high rate of speed, that defendant collided with the victim's car, and that the victim died from cardiac arrest related to trauma; state was not required to provide autopsy evidence to establish the cause of death. Joiner v. State, 835 So. 2d 42, 2003 Miss. LEXIS 17 (Miss. 2003).

Evidence that defendant drove with a blood alcohol content of .20 and was involved in a traffic accident in which a passenger in defendant's vehicle was killed, was sufficient to support defendant's conviction for aggravated driving while intoxicated; evidence of blood test results was properly admitted despite the fact that defendant demanded that hospital personnel stop trying to draw a sample of defendant's blood after a third unsuccessful attempt, as defendant had consented to have the sample drawn. Gates v. State, 829 So. 2d 1283, 2002 Miss. App. LEXIS 591 (Miss. Ct. App. 2002).

Facsimile copy of a prior driving under the influence conviction was properly admitted into evidence, despite the fact that the seal was blurred, because it was self-authenticating under Miss. R. Evid. 902(1), and no genuine question was raised as to the authenticity of the original under Miss. R. Evid. 1003. Lewis v. State, 831 So. 2d 553, 2002 Miss. App. LEXIS 672 (Miss. Ct. App. 2002).

Officer's testimony was sufficient to support the guilty verdict of driving under the influence because the officer testified (1) that the officer smelled alcohol in defendant's vehicle, on defendant's breath, and defendant's clothes; (2) that defendant admitted to consuming alcohol; and (3) that defendant could not pass the field sobriety test, defendant's gait was impaired, and defendant swayed when standing still. Harris v. State, 830 So. 2d 681, 2002 Miss. App. LEXIS 474 (Miss. Ct. App. 2002), cert. denied, 842 So. 2d 578, 2003 Miss. LEXIS 323 (Miss. 2003).

The State showed, pursuant to Miss. Code Ann. § 63-11-30(1)(a), that defendant was driving or operating a vehicle through an officer's testimony that the officer observed defendant drive up to the "no parking" area, and while talking with defendant, the officer noticed that he had an open can of beer in his hand, there was a twelve-pack of beer on the passenger side in plain view, his eyes were red, his pupils were dilated, his speech was slurred and he had an odor of an intoxicating beverage on his breath, and that defendant failed the sobriety tests given. Rhoades v. State, 832 So. 2d 544, 2002 Miss. App. LEXIS 246 (Miss. Ct. App.), cert. denied, 832 So. 2d 533, 2002 Miss. App. LEXIS 779 (Miss. Ct. App. 2002).

The uncontroverted evidence that defendant had ingested illegal narcotics that were still present in measurable quantities in defendant's body, together with evidence of remarkably unusual behavior and defendant's demonstrably reckless operation of a motor vehicle were enough, when considered in conjunction, to support a reasonable inference by the jurors that defendant was, in fact, under the influence of the narcotic substances at the time of the fatal accident; thus, the evidence was sufficient to convict defendant of vehicular homicide, Miss. Code Ann. § 63-11-30(d). Holloman v. State, 820 So. 2d 52, 2002 Miss. App. LEXIS 345 (Miss. Ct. App. 2002).

Evidence was sufficient to support a conviction for felony DUI negligent death where the record contained testimony that the defendant was speeding, that he was under the influence, and that he made no effort to slow his vehicle to avoid hitting a child who fell in the road with his bicycle on his leg. Smith v. State, 812 So. 2d 1045, 2001 Miss. App. LEXIS 115 (Miss. Ct. App. 2001).

The trial court acted within its discretion by taking judicial notice of the conversion from milligrams per deciliter to grams per milliliter so as to express the plaintiff's blood alcohol content in the manner used in subsection (1). Buel v. Sims, 798 So. 2d 425, 2001 Miss. LEXIS 63 (Miss. 2001).

The evidence was sufficient to support the jury's verdict that the defendant was guilty of driving under the influence where he did not attack the accuracy of the intoxilizer's analysis of his blood alcohol content, which was .164%. Porter v. State, 749 So. 2d 250, 1999 Miss. App. LEXIS 542 (Miss. Ct. App. 1999).

Abstract of defendant's prior court record, which county court clerk testified was accurate, was sufficient to prove conviction of second offense for driving under the influence (DUI) in prosecution for felony DUI. McIlwain v. State, 700 So. 2d 586, 1997 Miss. LEXIS 310 (Miss. 1997).

In a prosecution for DUI maiming under § 63-11-30, the State was required to prove that (1) the defendant was under the influence of intoxicating liquor or had .10 percent or more of alcohol in his blood while operating a motor vehicle; (2) the defendant was, while intoxicated and operating a motor vehicle, negligent; and (3) the defendant's negligence caused mutilation, disfigurement, or permanent disability of another. Holloman v. State, 656 So. 2d 1134, 1995 Miss. LEXIS 270 (Miss. 1995).

In a prosecution for DUI manslaughter under § 63-11-30, the State was required to prove that (1) the defendant was under the influence of intoxicating liquor or had .10 percent or more of alcohol in his blood while operating a motor vehicle; (2) the defendant was, while intoxicated and operating a motor vehicle, culpably negligent; and (3) the defendant's culpable negligence caused the death of another. Holloman v. State, 656 So. 2d 1134, 1995 Miss. LEXIS 270 (Miss. 1995).

In a prosecution for DUI maiming in violation of § 63-11-30, the evidence was sufficient to support a finding that the victim was permanently disabled or disfigured within the meaning of the statute where he suffered a fractured pelvis, there was testimony that his injuries were serious and would have been life-threatening without medical treatment, and he still suffered pain and an occasional limp at the time of the trial. Holloman v. State, 656 So. 2d 1134, 1995 Miss. LEXIS 270 (Miss. 1995).

The evidence was insufficient to support a conviction under § 63-11-30 for causing the death of another person by negligent operation of a motor vehicle while intoxicated, since there was a lack of evidence that the defendant was intoxicated "at the time" his vehicle struck the victim where a breathalyzer test indicating that the defendant had .13 percent alcohol in his system was administered 3 hours after the accident, there was no evidence demonstrating that the defendant was intoxicated immediately prior to, or at the time of, the accident, and there was uncontroverted testimony that the defendant drank the remains of a half-pint of gin between the time of the accident and the administration of the breathalyzer test. Matter of Slocum v. Jolly (In re Estate of Wright), 637 So. 2d 834, 1994 Miss. LEXIS 281 (Miss. 1994).

In a prosecution against a driver whose intoxicated condition contributed to the death of a small child, the evidence was sufficient to establish that the defendant was guilty of culpably negligent manslaughter under § 97-3-47, in spite of the defendant's argument that the evidence would only support a conviction for negligently causing the death of another while operating a motor vehicle under the influence of intoxicating liquor as defined by § 63-11-30(4), where eyewitnesses testified that the defendant's automobile was traveling down the wrong side of the road and barely missed striking a parked car immediately prior to veering off the pavement on the opposite side of the road and striking the child, the defendant had a blood alcohol level of .24, and the defendant failed to give a reason for driving down the left side of the road and then veering suddenly to the right and striking the child, but merely denied that his vehicle was on the wrong side of the road, denied that he narrowly missed the parked vehicle, denied that his vehicle ever left the pavement, and denied that his blood alcohol level was a result of anything other than 2 pre-accident beers and some whiskey consumed after the accident. Hopson v. State, 615 So. 2d 576, 1993 Miss. LEXIS 83 (Miss. 1993).

A conviction for driving under the influence may be based upon intoxilyzer results if the test is administered in accordance with the proper procedures and the defendant fails to introduce credible evidence which overcomes the statutory presumption of intoxication. Thus, defendants could be convicted on the basis of a breath test which presumed a 2100 to 1 breath to blood ratio where the defendants did not introduce any evidence concerning their particular ratios. Fisher v. Eupora, 587 So. 2d 878, 1991 Miss. LEXIS 669 (Miss. 1991).

The evidence was not sufficient to establish that the defendant was guilty of manslaughter by culpable negligence with respect to an automobile accident where the State proved only that the defendant's car collided with the rear of a pickup truck and that the defendant was driving while intoxicated, the defendant and his passenger testified that the defendant was driving well, and not recklessly, negligently, unlawfully, or at a high rate of speed, and no other witnesses contradicted the testimony of the defendant and his passenger. However, the evidence was sufficient to support a conviction for the lesser included offense of negligently killing another while under the influence of intoxicating liquor. Evans v. State, 562 So. 2d 91, 1990 Miss. LEXIS 280 (Miss. 1990).

Evidence that the defendant ran a stop sign while intoxicated and collided with a truck resulting in the death of a passenger was not sufficient to prove manslaughter by culpable negligence under § 97-3-47 but was sufficient to support a conviction for the lesser included offense of negligently killing another while under the influence of an intoxicating liquor pursuant to § 63-11-30. Childs v. State, 521 So. 2d 882, 1988 Miss. LEXIS 118 (Miss. 1988).

10. Instructions to jury.

There was no error in the trial court's decision not to allow defendant's proposed jury instruction becuase the jury instruction it gave, along with the State's jury instructions providing the elements required to prove aggravated driving under the influence, fairly and accurately informed the jury of the law in the case. Valentine v. State, 322 So. 3d 417, 2021 Miss. LEXIS 149 (Miss. 2021).

Jury was properly instructed on the elements of aggravated driving under the influence. Furthermore, the instruction did not constructively amend defendant's indictment, as the instruction did not substantially alter the elements of proof necessary for a conviction, and did not materially alter the defense by defendant. Friston v. State, 243 So. 3d 198, 2017 Miss. App. LEXIS 444 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 71, 2018 Miss. LEXIS 230 (Miss. 2018).

Jury was properly instructed and returned a guilty verdict that was supported by the evidence at trial because the State presented evidence that defendant was negligent in maintaining her lane of travel, which caused her to lose control of her vehicle and, thereby, caused the victim's death. Dartez v. State, 271 So. 3d 733, 2018 Miss. App. LEXIS 636 (Miss. Ct. App. 2018).

Trial court did give an erroneous and confusing jury instructions regarding negligence because the negligence instructions, when read as a whole, adequately instructed the jury on the standard of care applicable to defendant. Dartez v. State, 271 So. 3d 733, 2018 Miss. App. LEXIS 636 (Miss. Ct. App. 2018).

Jury was properly instructed on simple negligence, which was enough to support a conviction under this section. Koch v. State, 222 So. 3d 1088, 2017 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 222 So. 3d 312, 2017 Miss. LEXIS 295 (Miss. 2017).

Defendant was properly convicted of felony driving under the influence because the trial court did not err in refusing to instruct on reckless driving, as defendants in the State of Mississippi no longer enjoyed the right to have the jury instructed on a charge for which they were not indicted unless it was included in the charged offense. McCoy v. State, 196 So. 3d 1007, 2015 Miss. App. LEXIS 616 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 615, 2016 Miss. LEXIS 325 (Miss. 2016).

In a felony driving under the influence (DUI) case, defendant was not entitled to a jury instruction that it was not illegal to drink and drive, because the jury was properly instructed as to the elements of felony DUI and the level of proof required, and there was no evidentiary basis for the instruction, as defendant did not testify at trial that he had not consumed enough alcohol to be considered under the influence; he denied that he had consumed any alcohol on the day of his arrest. Brooks v. State, 999 So. 2d 408, 2008 Miss. App. LEXIS 390 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 852, 2009 Miss. LEXIS 48 (Miss. 2009).

In a criminal trial, the jury was properly instructed that the elements required to prove the offense of felony driving under the influence (DUI) in violation of Miss. Code Ann. § 63-11-30(1) were: (1) defendant was operating a motor vehicle, (2) defendant was under the influence of intoxicating liquor, and (3) defendant had two prior DUI convictions within the past 5 years. Defendant was not entitled to a jury instruction that the alcohol intoxication impaired his ability to operate the vehicle. Heidelberg v. State, 976 So. 2d 948, 2007 Miss. App. LEXIS 738 (Miss. Ct. App. 2007).

Where jury instructions did not mention defendant's being under the influence but instead provided that conviction was permitted if defendant did "negligently operate a motor vehicle while having .08% or more blood alcohol by weight volume," the instruction properly reflected the statutory standard for driving under the influence as set forth in Miss. Code Ann. § 63-11-30(1). Sumrall v. State, 955 So. 2d 332, 2006 Miss. App. LEXIS 404 (Miss. Ct. App. 2006), cert. denied, 949 So. 2d 37, 2007 Miss. LEXIS 137 (Miss. 2007).

Where defendant was tried for one count of negligent operation of a motor vehicle while under the influence of intoxicating liquors, aggravated assault for his injury of the driver, and five counts of manslaughter by culpable negligence for the deaths of five passengers, he was not entitled to an instruction that aggravated operation of a vehicle while under the influence (DUI), set out in Miss. Code Ann. § 63-11-30, was a lesser-included offense of manslaughter by culpable negligence. Lawrence v. State, 931 So. 2d 600, 2005 Miss. App. LEXIS 552 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 345 (Miss. 2006).

Trial court did not err in refusing to instruct the jury on circumstantial evidence where the State introduced direct evidence of guilt under Miss. Code Ann. § 63-11-30(1)(a) and (c) by introducing defendant's blood alcohol level and incriminating statements made to the arresting officer. Lewis v. State, 831 So. 2d 553, 2002 Miss. App. LEXIS 672 (Miss. Ct. App. 2002).

In a prosecution for felony driving under the influence of alcohol causing death arising from an incident in which the defendant struck and killed an elderly man as he walked across a street, it was reversible error to instruct the jury that any contributory negligence of the victim was not a defense to the crime charged unless such negligence was the sole proximate cause of the collision and that the defense of contributory negligence had to be proven beyond a reasonable doubt; such instruction effectively shifted the burden of proof to the defendant. Frambes v. State, 751 So. 2d 489, 1999 Miss. App. LEXIS 575 (Miss. Ct. App. 1999).

11. Double jeopardy.

Double Jeopardy Clause was not violated because the drunk-driving statute established separate crimes for each of the victims identified and the offense of leaving the scene of an accident contained different elements from the offenses established by the drunk-driving statute. Buckner v. State, 135 So. 3d 915, 2013 Miss. App. LEXIS 682 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 201 (Miss. 2014).

Inmate's convictions for both driving under the influence (DUI) manslaughter and DUI mayhem did not constitute a violation of his double jeopardy rights. The inmate could be convicted for each death or injury that he caused and the accident he was involved in killed one of his passengers and injured four others. Sills v. State, 105 So. 3d 1189, 2013 Miss. App. LEXIS 13 (Miss. Ct. App. 2013).

Defendant's double jeopardy rights were not violated by her convictions for three counts of driving under the influence and negligently causing death because the State was not required to specifically list the substance or substances that defendant allegedly was driving under the influence of at the time of the accident. Defendant was only convicted of one count of driving under the influence of hydrocodone and negligently causing the death or injury of another for each death or injury so caused. Teston v. State, 44 So. 3d 977, 2008 Miss. App. LEXIS 681 (Miss. Ct. App. 2008), cert. dismissed, 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

Appellant's conviction for DUI manslaughter and two counts of DUI mayhem in violation of Miss. Code Ann. § 63-11-30 did not subject him to double jeopardy. Each of the counts were predicated upon separate felonies, one instance of manslaughter and two instances of mutilation or mayhem that appellant committed as a result of his drunk driving. Moreno v. State, 967 So. 2d 701, 2007 Miss. App. LEXIS 739 (Miss. Ct. App. 2007).

Denial of the inmate's petition for post-conviction relief was proper where double jeopardy protection was not implicated because Miss. Code Ann. § 63-11-30(5) required an element not required by Miss. Code Ann. § 97-3-47, namely, that of intoxication. Ramage v. State, 914 So. 2d 274, 2005 Miss. App. LEXIS 772 (Miss. Ct. App. 2005).

Each offense is separate and distinct in cases of felony DUI enhancement and does not violate the constitutional right against double jeopardy. Use of defendant's prior DUI convictions could be used to enhance punishment for his subsequent conviction without violating double jeopardy. McLaurin v. State, 882 So. 2d 268, 2004 Miss. App. LEXIS 913 (Miss. Ct. App. 2004).

Double jeopardy was not implicated in a driving-while-impaired case when a trial court instructed the jury on Miss. Code Ann. § 63-11-30(1)(a) and (c) because they were not separate offenses; rather, they were alternative routes to establishing a violation of Miss. Code Ann. § 63-11-30. Lewis v. State, 831 So. 2d 553, 2002 Miss. App. LEXIS 672 (Miss. Ct. App. 2002).

The double jeopardy clauses of the United States and Mississippi Constitutions do not preclude criminal prosecution for violation of § 63-11-30 subsequent to administrative license suspension pursuant to § 63-11-23(2). Keyes v. State, 708 So. 2d 540, 1998 Miss. LEXIS 33 (Miss. 1998).

Section 63-11-30 proscribes the act of drunk driving rather than the act of negligent killing; thus, an indictment charging the defendant with 2 counts of violating § 63-11-30 based on only one act of drunk driving subjected the defendant to double jeopardy and required reversal of the conviction on the second count. Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

Where a defendant was charged with misdemeanor driving under the influence of alcohol, forfeiture of his bond and entry of a sentence of guilty into the docket constituted a conviction such that a subsequent trial for felonious driving under the influence was barred by the principle of double jeopardy. Bennett v. State, 528 So. 2d 815, 1988 Miss. LEXIS 311 (Miss. 1988).

12. Sentencing.

Trial court did not abuse its discretion in sentencing defendant where the 10-year sentence was within the statutory limits of Miss. Code Ann. § 63-11-30(2)(d) (Rev. 2013). Ross v. State, 275 So. 3d 1090, 2019 Miss. LEXIS 265 (Miss. 2019).

Because the trial court did not sentence defendant for vehicular manslaughter while intoxicated under Miss. Code Ann. § 63-11-30(5), but, instead, defendant received a 20-year sentence for manslaughter under Miss. Code Ann. § 97-3-47, the trial court's sentence of 20 years under Miss. Code Ann. § 97-3-25(1) was proper. England v. State, 195 So. 3d 830, 2016 Miss. App. LEXIS 14 (Miss. Ct. App. 2016), cert. dismissed, 2017 Miss. LEXIS 112 (Miss. Mar. 23, 2017).

Trial court properly did not make a finding that defendant was a violent offender under Miss. Code Ann. § 47-5-1003 when defendant was convicted of driving under the influence under Miss. Code Ann. § 63-11-30(5) because § 47-5-1003 does not require the trial court to make an on the record determination that the accused is a violent offender, and further, aggravated DUI does not fall within either of the excluded categories of § 47-5-1003. Smith v. State, 942 So. 2d 308, 2006 Miss. App. LEXIS 850 (Miss. Ct. App. 2006).

Defendant received two separate sentences for two separate offenses; that one followed immediately after the other is one of the costs of committing more than one felony DUI offense, but the statutory maximum was not exceeded on either separate offense. Burns v. State, 933 So. 2d 329, 2006 Miss. App. LEXIS 495 (Miss. Ct. App. 2006).

Petitioner was properly denied postconviction relief after he pled guilty to manslaughter by culpable negligence because the maximum sentence for the crime under Miss. Code Ann. § 63-11-30(4) was 25 years, and petitioner was only sentenced to 20 years in prison, with 14 years suspended. Petitioner failed to show good cause or prejudice. Oaks v. State, 912 So. 2d 1075, 2005 Miss. App. LEXIS 675 (Miss. Ct. App. 2005).

Trial court did not err in admitting the abstract of defendant's first of two DUI convictions in Georgia and considering it for enhancement purposes in the sentencing phase for defendant's conviction of his third DUI offense because in Mississippi prior convictions are necessary elements of the crime of felony DUI under Miss. Code Ann. § 63-11-30, not merely sentence enhancement factors. Also defendant failed to introduce any evidence to show that his first DUI conviction was in fact uncounseled and resulted in jail time. Watkins v. State, 910 So. 2d 591, 2005 Miss. App. LEXIS 147 (Miss. Ct. App. 2005).

Where defendant failed to object to testimony regarding his prior convictions for driving under the influence (DUI) during a felony DUI trial, he waived his right to appeal, despite the fact that the prior convictions were only relevant to sentencing under Miss. Code Ann. § 63-11-30(8). Watson v. State, 835 So. 2d 112, 2003 Miss. App. LEXIS 6 (Miss. Ct. App. 2003).

Under Miss. Code Ann. § 63-11-30(2)(c), a trial court was permitted to impose a sentence for a third conviction of driving under the influence of not less than one year nor more than five years, and petitioner's sentence did not exceed the five-year maximum where he served one year, was involved in a three-year period of supervised release, his supervised release was revoked, and the suspended four-year sentence was imposed as the three-year supervised release period did not count towards his sentence but was merely time he was under supervision. Johnson v. State, 802 So. 2d 110, 2001 Miss. App. LEXIS 505 (Miss. Ct. App. 2001).

Sentence of 20 years with eight years suspended and five years' probation was within the statutory sentencing limit allowed under Miss. Code Ann. § 63-11-30(5) for a conviction under that statute for felony driving under the influence of alcohol causing death and was not constitutionally excessive. Havard v. State, 800 So. 2d 1193, 2001 Miss. App. LEXIS 308 (Miss. Ct. App. 2001).

Although at the time of defendant's first conviction felony DUI required four rather than the current three convictions, that first conviction may be counted toward the current requirement. Boyd v. State, 751 So. 2d 1050, 1998 Miss. App. LEXIS 949 (Miss. Ct. App. 1998).

A 10-year sentence imposed upon a defendant pursuant to § 63-11-30(4) for a DUI maiming conviction did not constitute cruel or unusual punishment, as it was within the statutory limits. Holloman v. State, 656 So. 2d 1134, 1995 Miss. LEXIS 270 (Miss. 1995).

In a prosecution for driving under the influence, enhanced 9-month sentences received by the defendants after they sought a trial de novo in the circuit court were not improper, even though the defendants were originally tried and sentenced in municipal court under § 21-13-19 which provides for a maximum penalty of 6 months' incarceration; when the defendants filed their appeals for trial de novo in the circuit court, they took the chance that the penalties would be greater than allowed by § 21-13-19 since the actions were brought under § 63-11-30(1)(c). Fisher v. Eupora, 587 So. 2d 878, 1991 Miss. LEXIS 669 (Miss. 1991).

Trial judge acted without statutory authority in suspending defendant's driving privileges for 5 years, and imposed sentence exceeding maximum penalty provided by law, where defendant was convicted of vehicular homicide following head-on collision, because statute provided for period of suspension of driving privileges varying from 90 days to 3 years. Slaymaker v. State, 513 So. 2d 921, 1987 Miss. LEXIS 2827 (Miss. 1987).

13. Non-adjudication of minors.

Because defendant's blood alcohol content level was .127 percent, it was not within the parameters of the Mississippi Zero Tolerance for Minors provision of the Implied Consent Law, Miss. Code Ann. § 63-11-30(3)(a); therefore, he was not eligible for non-adjudication under that law. Palmer v. City of Oxford, 860 So. 2d 1203, 2003 Miss. LEXIS 757 (Miss. 2003).

14. Miscellaneous.

While the drugs marijuana and Xanax were classified as controlled substances, the drug Topamax was not classified under any of the listed schedules, and thus, subsection (1)(b) would apply for that substance, not subsection (1)(c). Valentine v. State, 322 So. 3d 417, 2021 Miss. LEXIS 149 (Miss. 2021).

Because the jury would have reached the same result if Topamax had not been misidentified as a controlled substance at trial or if the jury had been instructed with regard to subsection (b) rather than just subsection (c), the error harmless beyond a reasonable doubt; evidence was presented both by the State and the defense's own expert that the drug affected the central nervous system. Valentine v. State, 322 So. 3d 417, 2021 Miss. LEXIS 149 (Miss. 2021).

In a felony driving under the influence case, defendant's right to confront witnesses was not violated when his blood-analysis results were authenticated and testified to at trial by a forensic scientist who did not conduct the actual testing of defendant's blood sample, where the scientist stated that he was the technical reviewer on the case and was involved in the production of the report. Ross v. State, 192 So. 3d 1061, 2016 Miss. App. LEXIS 22 (Miss. Ct. App. 2016).

City and police officer were exempt from liability for hitting a minor's vehicle because (1) the minor was engaged in criminal activity, as the minor had marijuana in the minor's system and a blood alcohol content above the legal limit for minors, and (2) a causal nexus existed between this activity and the minor's death. McElroy v. City of Brandon, 198 So. 3d 373, 2015 Miss. App. LEXIS 678 (Miss. Ct. App. 2015), cert. denied, 203 So. 3d 596, 2016 Miss. LEXIS 374 (Miss. 2016).

Defendant was properly convicted of driving under the influence because the county court did not err in failing to consider the .005 margin of error since there was no evidence it failed to do so; once evidence of the margin of error was before the county court, it, as the fact-finder, was entitled to weigh that evidence as it saw fit, and the fact that the county court did not weigh the evidence in defendant's favor did not necessarily establish that the county court failed to consider it. Bratcher v. State, 193 So. 3d 639, 2015 Miss. App. LEXIS 539 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 1268, 2016 Miss. LEXIS 268 (Miss. 2016).

County court did not apply an improper standard of law when convicting defendant of common-law driving under the influence because its determination of defendant's guilt was well-founded both on the law and the evidence. Huhn v. City of Brandon, 121 So. 3d 947, 2013 Miss. App. LEXIS 331 (Miss. Ct. App. 2013).

In an adversary proceeding in which an insurance company sued a voluntary Chapter 7 debtor, asserting that he was indebted to the insurance company as the insured's subrogee in the amount of $50,000.00 and the insurance company filed an unopposed motion for summary judgment on the issue of non-dischargeability, it had proved by a preponderance of the evidence the existence of debt for personal injury to its insured caused by the debtor's operation of a motor vehicle unlawfully under state law due to his intoxication, in violation of Miss. Code Ann. § 63-11-30. Cincinnati Ins. Co. v. Deeds (In re Deeds), 2010 Bankr. LEXIS 2809 (Bankr. N.D. Miss. Sept. 1, 2010).

Where an officer conducted a traffic stop, he detected the odor of alcohol coming from the vehicle and noticed that defendant had bloodshot eyes and slurred speech; defendant refused to take the Intoxilyzer 5000 test. Defendant was properly convicted of felony driving under the influence (DUI) in violation of Miss. Code Ann. § 63-11-30(1) based on two prior DUI convictions within 5 years. Heidelberg v. State, 976 So. 2d 948, 2007 Miss. App. LEXIS 738 (Miss. Ct. App. 2007).

Allowing the verdict against defendant to stand would not be an unconscionable injustice where the police officer testified that defendant and his brother had switched places in the car, and his testimony was corroborated by the deputy and an unnamed eyewitness; the act of switching drivers was an indication to the jury that defendant was aware of his intoxicated condition and sought to conceal it from the police, and any claim that defendant's brother was driving at all pertinent times that night was properly considered and resolved by the jury. Ward v. State, 881 So. 2d 316, 2004 Miss. App. LEXIS 868 (Miss. Ct. App. 2004).

Court affirmed the circuit court's decision affirming defendant's conviction under Miss. Code Ann. § 63-11-30(1)(c); while the prosecution violated Miss. Unif. Cir. & County Ct. Prac. R. 9.04 by not providing the documents defendant requested, including the breath test instrument manuals, or by instead filing an objection with the trial court, the requested manuals would not have changed the outcome of the and the discovery error was harmless. Wyatt v. City of Pearl, 876 So. 2d 281, 2004 Miss. LEXIS 590 (Miss. 2004).

Where defendant's girlfriend suddenly became violently ill in a secluded, rural location, attempts to summon help were fruitless, and time was clearly of the essence, defendant argued that his decision to drive after drinking was excusable; the trial court erred in rejecting defendant's necessity defense because it applied the wrong legal standard and made no findings to support its conclusion that defendant had other options for getting his girlfriend to a hospital. Stodghill v. State, 881 So. 2d 885, 2004 Miss. App. LEXIS 87 (Miss. Ct. App. 2004), rev'd, 892 So. 2d 236, 2005 Miss. LEXIS 59 (Miss. 2005).

While the circuit court, pursuant to Miss. Code Ann. § 99-35-103(b), could have decided the question of law raised by the prosecution on appeal, it erred by reversing defendant's acquittal on a charge of driving under the influence (DUI) second offense, granting the prosecution's motion to amend the charge to DUI first offense (which the lower court had denied), and affirming a conviction for DUI first offense which the lower court had not entered. Jamison v. City of Carthage, 864 So. 2d 1050, 2004 Miss. App. LEXIS 92 (Miss. Ct. App. 2004).

Trial court did not err in convicting defendant of driving under the influence in violation of Miss. Code Ann. § 63-11-30 over his objection to irregularities in the "copy" of the citation/affidavit he received because, although defendant did not have an exact blood alcohol content (BAC) reading listed on the copy of the citation that he received, he was nevertheless aware that his BAC level was above that allowable for individuals under the legal age to purchase alcohol; thus, defendant's traffic ticket complied with Miss. Code Ann. § 63-9-21(6) and (3)(b) and (c). Palmer v. City of Oxford, 860 So. 2d 1203, 2003 Miss. LEXIS 757 (Miss. 2003).

Operating a vehicle involves both the moving and the stopping of a vehicle, and when these are done under the influence of alcohol it is considered criminal activity, which operates to limit the duty owed by police and fire personnel under Miss. Code Ann. § 11-46-9(1)(c); however, in order for recovery from a governmental entity to be barred, the criminal activity has to have some causal nexus to the wrongdoing of the tortfeasor. Estate of Williams v. City of Jackson, 844 So. 2d 1161, 2003 Miss. LEXIS 209 (Miss. 2003).

Inmate's petition for post-conviction relief failed, as a factual basis for the charge of driving under the influence (DUI) manslaughter had been established by the inmate's acknowledgement on the record that he drove a vehicle, that he was involved in an accident in which his passenger was killed, that his vehicle was in the wrong lane, and that a test revealed that his blood alcohol level was .29 percent. Turner v. State, 864 So. 2d 288, 2003 Miss. App. LEXIS 679 (Miss. Ct. App. 2003), cert. denied, 864 So. 2d 282, 2004 Miss. LEXIS 35 (Miss. 2004).

The trial court committed reversible error in denying the defendant's request for a jury trial where he was tried for a violation of subsection (2)(b) of this section, which provided (in its version effective July 1, 1995) for a statutory maximum sentence of one year for second offense D.U.I. Harkins v. State, 735 So. 2d 317, 1999 Miss. LEXIS 129 (Miss. 1999).

Even if statute providing that person shall not be entitled to any judicial review of or appeal from actions of Commissioner of Public Safety suspending person's driver's license pursuant to statute prescribing penalties for operation of vehicle while under influence had been in effect when motorist filed petition for reduction of driver's license suspension, statute would only have prevented appeal of suspension, and would not have prevented petition for reduction. Department of Pub. Safety v. Prine, 687 So. 2d 1116, 1996 Miss. LEXIS 62 (Miss. 1996).

Initial stop of motorists at highway sobriety checkpoints conducted by state police did not violate Fourth Amendment, as balance among state's interest in preventing drunk driving, extent to which checkpoint program could reasonably be said to advance that interest, and degree of intrusion upon individual motorists, weighed in favor of program. Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412, 1990 U.S. LEXIS 3144 (U.S. 1990).

In a prosecution for driving while intoxicated, the trial court's refusal to compel production of an intoxilyzer machine into court to conduct a demonstration did not violate the defendant's constitutional right to be confronted by the witnesses against him and to have compulsory process for obtaining witnesses in his favor, where the trial court ordered the city to allow the defendant the opportunity to run a test in the police station where the intoxilyzer machine was situated, the defendant failed to show that he would be unable to do what was needed in order to properly defend the case by examining and testing the machine at the police station, the defendant made no showing that he could substantially replicate the conditions of the night of his arrest, and moving the intoxilyzer machine to the court house would have been substantially disruptive and inconvenient to the city law enforcement authorities. Goforth v. Ridgeland, 603 So. 2d 323, 1992 Miss. LEXIS 348 (Miss. 1992).

In a prosecution for driving under the influence, the trial court did not abuse its discretion in denying the defendants' requests for an expert on the breath testing device used by the arresting officers, where the requests were no more than undeveloped assertions and the defendants made no showing that the requested assistance would benefit them in any way. Fisher v. Eupora, 587 So. 2d 878, 1991 Miss. LEXIS 669 (Miss. 1991).

15. Prior convictions.

State of Mississippi properly charged defendant with felony driving under the influence (DUI) because the record established that defendant committed three separate DUI offenses within a five-year time frame, as defendant's conviction for aggravated DUI served as a predicate conviction for defendant's felony-DUI indictment. McCoy v. State, 196 So. 3d 1007, 2015 Miss. App. LEXIS 616 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 615, 2016 Miss. LEXIS 325 (Miss. 2016).

Defendant's conviction for his third DUI offense within five years, under Miss. Code Ann. § 63-11-30(2)(c), was appropriate because, even though the abstract of defendant's prior conviction did not include the date of arrest, a reasonable juror could have inferred that the date of arrest for the DUI was the same date that the offense occurred. Nelson v. State, 69 So. 3d 50, 2011 Miss. App. LEXIS 333 (Miss. Ct. App. 2011).

16. Appeals.

Although defendant argued that the evidence was insufficient to support his conviction for driving under the influence because the trooper did not have firsthand knowledge of the events that occurred on the night of defendant's arrest, defendant failed to raise a contemporaneous objection to the trooper's testimony during trial and was, therefore, precluded from raising this issue for the first time on appeal. Terrell v. State, 151 So. 3d 277, 2014 Miss. App. LEXIS 657 (Miss. Ct. App. 2014).

Because defendant did not post the necessary bond pursuant to Miss. Unif. Cir. & County Ct. Prac. R. 12.02(A) and he did not file a motion seeking to cure his deficient appeal, his appeal from a municipal court's judgment accepting his guilty plea to driving under the influence was properly dismissed . Hill v. City of Wiggins, 984 So. 2d 1086, 2008 Miss. App. LEXIS 363 (Miss. Ct. App. 2008).

17.-20. [Reserved for future use.]

21. Under former law.

One need not be legally intoxicated in order for question of impairment of reaction time by intoxicating liquors to be properly submitted to jury in negligence action; driver's admission to having consumed several beers in hours preceding traffic accident forms sufficient evidentiary basis for submission of question to jury notwithstanding absence of alcohol on driver's breath and absence of liquor bottles in driver's car. Mills v. Nichols, 467 So. 2d 924, 1985 Miss. LEXIS 2017 (Miss. 1985).

Being under the influence of marijuana is not a designated criminal offense under our statutes except in conjunction with the operation of a vehicle. Murray v. State, 310 So. 2d 919, 1975 Miss. LEXIS 1921 (Miss. 1975).

Driving an automobile on a highway under the influence of intoxicants, or at a high and unlawful rate of speed, is not only dangerous but is negligence per se, and if such negligence contributes to an injury the defendant is liable in damages. Freeze v. Taylor, 257 So. 2d 509, 1972 Miss. LEXIS 1459 (Miss. 1972).

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Miss. Code Section 63-11-30(2)(b) provides that justice court may fine person full amount provided for, that is, up to $1,500, even though justice court's civil jurisdiction is still limited to $1,000. Tallant, Apr. 21, 1993, A.G. Op. #93-0236.

Miss. Code Section 63-11-30 requires justice court judges to sentence persons convicted of driving under influence (DUI) to complete safe driving course; this statute places duty on judge, not clerk, to sign order requiring defendant to attend these programs. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Constable, where probable cause does exist, may charge an individual with D.U.I. under statute, even though constable may not administer breath test under Section 63-11-5. Lewis, July 14, 1993, A.G. Op. #93-0369.

Section 99-15-26 of Mississippi Code, which allows judge to withhold adjudication upon defendant's completion of certain conditions, specifically does not apply to any offense under the Mississippi Implied Consent Law. Stephens, Jan. 12, 1994, A.G. Op. #93-0889.

Section 21-23-7(5) authorizes a municipal court judge, in the judge's discretion to suspend the jail time under Section 63-11-30(2)(b). Crow, February 23, 1995, A.G. Op. #95-0105.

Under this section, a conviction of the charge of DUI, where the defendant had refused to submit to a breath test, would count as a DUI conviction for enhancement purposes. Fike, April 6, 1995, A.G. Op. #95-0195.

Double jeopardy does not necessarily prohibit charging a defendant with public drunkenness under Section 97-29-47, even if that defendant has been acquitted of DUI under Section 63-11-30. The two are separate and distinct criminal charges and contain different elements. Moffett, June 6, 1995, A.G. Op. #95-0277.

Section 63-11-30(7) overrules Page v. State, 607 So. 2d 1163 (Miss. 1992) and Ashcraft v. City of Richland, 620 So. 2d 1210 (Miss. 1993) in that Section 63-11-30(7) states that the indictment shall not be required to enumerate previous DUI convictions. It shall only be necessary that the indictment state the number of times that a defendant has been convicted and sentenced within the required time. Mitchell, August 14, 1995, A.G. Op. #95-0522.

The date of the offense and not the date of trial determines when the 1995 amendment to Section 63-11-30, which extends the time period for which prior D.U.I. offenses may be considered for enhancement purposes to ten years, should apply. Solomon, August 14, 1995, A.G. Op. #95-0521.

Under this section, there is no requirement that a breath alcohol intoxilizer test be given to an individual who is suspected of DUI. Gentry, May 3, 1996, A.G. Op. #96-0251.

Under this section the Legislature intended for second and subsequent DUI offenders to serve the mandatory minimum incarceration time consecutively. O'Cain, September 5, 1996, A.G. Op. #96-0621.

Based on Section 63-11-30 the fee that is required to be paid when filing a hardship petition is non-refundable. Coleman, October 11, 1996, A.G. Op. #96-0703.

Under Section 63-11-21, if a person refuses to submit to a chemical test, the officer should inform the person that he is subject to arrest and upon conviction faces the same penalties as one who does submit to the test. The law enforcement office need not provide such a warning if the person does not refuse to submit to a chemical test. See also Section 63-11-30. Jones, November 8, 1996, A.G. Op. #96-0786.

The failure to advise the person as set forth in Section 63-11-21 would not effect the prosecution. This amendment to the code section affords the defendant no additional rights. See also Section 63-11-30. Jones, November 8, 1996, A.G. Op. #96-0786.

Pursuant to Section 63-11-21 it is only necessary for the officer to inform the driver of the consequences if the driver refuses to submit to a chemical test. See also Section 63-11-30. Henderson, November 8, 1996, A.G. Op. #96-0763.

Pursuant to Section 63-11-30 the law enforcement officer must inform a driver who refuses to submit to a chemical test that he is subject to arrest and upon conviction faces the same penalties as one who does submit to the test. Henderson, November 8, 1996, A.G. Op. #96-0763.

Section 63-11-30(5) does not provide the exclusive method of establishing prior convictions for enhancement purposes under the DUI law and that a certified copy of a conviction from the clerk of the court where the defendant was previously convicted would be sufficient. Cadle, November 15, 1996, A.G. Op. #96-0791.

The vehicle forfeiture provisions of Miss Code Section 63-11-30(2)(c) only apply to a vehicle that is owned by the driver charged with a third DUI violation and not to a vehicle owned by someone other than such a driver. Bryan, Aug. 15, 1997, A.G. Op. #97-0498.

Courts have discretion to allow amendments of improper tickets issued for driving under the influence of alcohol or other impairing substances if the defendant is given a fair opportunity to prepare a defense. McCarty, Aug. 15, 1997, A.G. Op. #97-0502.

In certain circumstances, an officer may legally sign an affidavit charging an individual with DUI even if another officer makes the initial traffic stop. Gentry, Dec. 12, 1997, A.G. Op. #97-0759.

The statute mandates that the court order an offender to attend MASEP and does not make exceptions for out-of-state drivers who are convicted of a first offense DUI. Miller, September 4, 1998, A.G. Op. #98-0520.

The Zero Tolerance for Minors law only applies when a person under the age of 21 years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%); therefore, if a person refuses to take an intoxilizer test and there is no blood alcohol level reading, the Zero Tolerance for Minors section of the DUI law would not apply. Johnston, October 27, 1998, A.G. Op. #98-0607.

It must be shown that a DUI defendant either employed an attorney or waived his right to an attorney, regardless of whether a defendant is given jail time on a DUI 1st and 2nd offense. Rushing, November 25, 1998, A.G. Op. #98-0711.

A forfeiture action after the final disposition of the DUI case should be brought promptly upon final conviction. Bruni, August 20, 1999, A.G. Op. #99-0401.

A second offense DUI may be tried in absentia, and a first offense DUI conviction that was tried in absentia may be used for enhancement purposes. Belk, Jr., March 24, 2000, A.G. Op. #2000-0126.

It is not necessary to hold an evidentiary hearing prior to releasing a vehicle to a third party or lienholder. Pace, April 7, 2000, A.G. Op. #2000-0178.

The justice court record of a juvenile who is arrested and charged with DUI is a public record until and unless a court orders the charge nonadjudicated. Little, Oct. 6, 2000, A.G. Op. #2000-0592.

If a police officer has probable cause to believe that an individual is driving under the influence on the state fairgrounds in violation of Section 63-11-30, the officer may stop the individual and charge the violator accordingly; however, if the operator of the vehicle refuses to submit to a chemical test, it must be shown that the vehicle was being operated on the public highways, public roads, and streets of the state before the violator can be subjected to the penalties of Section 63-11-5. DeLaughter, Nov. 20, 2000, A.G. Op. #2000-0679.

If a defendant is convicted of DUI second offense and he also refused the intoxilyzer test, his driver's license is suspended for five years (two years pursuant to Section 63-11-30(2)(b) plus one year pursuant to Section 63-11-23(1) plus two years pursuant to Section 63-11-30(4)); the five years is reduced to three 3 years upon successful completion of chemical dependency treatment at a facility approved by the Department of Mental Health. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

If a defendant is convicted of DUI third offense and he also refused the intoxilyzer test, his driver's license is suspended for 11 years (five years pursuant to Section 63-11-30(2)(c) plus one year pursuant to Section 63-11-23(1) plus five years pursuant to Section 63-11-30(4)); the 11 years is reduced to seven 7 years upon successful completion of chemical dependency treatment at a facility approved by the Department of Mental Health. Shirley, Mar. 30, 2001, A.G. Op. #01-0167.

Subsection (1)(d) requires that the prosecution show that the defendant was under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; there is no requirement that the prosecution show a level of impairment, but merely that the defendant is under the influence of such a drug. Knight, Apr. 23, 2001, A.G. Op. #01-0227.

A minor charged with being impaired by any substance other than alcohol does not qualify for the Zero Tolerance for Minors provisions (subsection 3) since he will not have a blood alcohol reading between .02 percent and .08 percent. Knight, Apr. 23, 2001, A.G. Op. #01-0227.

A conviction for a DUI violation within the last five years may be used for enhancement purposes even if the defendant was a minor at the time he was convicted of the prior DUI and is no longer a minor when cited for the current DUI charge. Baker, Sr., Apr. 23, 2001, A.G. Op. #01-0225.

A justice court has authority to nonadjudicate a charge only in the instance of a DUI under the Zero for Tolerance for Minors Act found in subsection (3)(g); the nonadjudication of a charge does not automatically expunge the record of such charges, but the court has the discretion to expunge a nonadjudicated charge on its own motion or the defendant may petition the court to expunge a nonadjudicated charge; unless or until the nonadjudicated charges are expunged, they remain on the docket with the disposition of nonadjudicated/dismissed. Shirley, Nov. 30, 2001, A.G. Op. #01-0719.

If a judge non-adjudicates a DUI charge under § 63-11-30(3) but imposes a $250.00 fine as a condition of such non-adjudication, such fine is a "penalty" under § 99-19-73 and, therefore, the assessment must be collected. Cruber, Feb. 22, 2002, A.G. Op. #02-0102.

Law enforcement officers may revise existing uniform Implied Consent or DUI citations from .10 BAC to .08 BAC. to reflect the current threshold level of alcohol concentration. Mullen, Oct. 18, 2002, A.G. Op. #02-0572.

In regard to revising Implied Consent or DUI citations because of changes in the law, a municipality must comply with § 63-9-21 and may not delay ordering revised citations until the current supply is exhausted. Mullen, Oct. 18, 2002, A.G. Op. #02-0572.

The provisions of the Zero Tolerance for Minors subsection apply only to someone under the age of twenty-one who is being charged under subsection(1)(c) which requires a specific amount of alcohol in the person's blood; they do not apply to someone who is charged under subsection (1)(d). Baker, Dec. 6, 2002, A.G. Op. #02-0698.

Section 63-11-30(2)(c) provides for the forfeiture of a vehicle upon the conviction of a defendant for a third offense DUI; there is no provision for forfeiture of a vehicle upon a second offense DUI conviction. Johnston, Jan. 10, 2003, A.G. Op. #02-0762.

A minor who has had a DUI non-adjudicated may not have a subsequent DUI offense non-adjudicated. Livingston, July 7, 2003, A.G. Op. 03-0311.

A defendant convicted of DUI second offense would not receive credit against the mandatory five days of imprisonment for time spent at an inpatient treatment facility. Zebert, June 21, 2004, A.G. Op. 04-0246.

The authority of a municipal or justice court to grant a hardship privilege does not apply to anyone who does not qualify for the provisions of the Zero Tolerance for Minors Act. Nowak, July 23, 2004, A.G. Op. 04-0325.

An individual seeking a hardship privilege in municipal of justice court must file a petition with the municipal or justice court and pay the clerk of the municipal or justice court a fee of $50.00 to be deposited into the state general fund for substance abuse treatment and education. Nowak, July 23, 2004, A.G. Op. 04-0325.

The fact that a driver apprehended driving a motor vehicle while under the influence of a drug or controlled substance has a valid prescription is a defense to a prosecution under 63-11-30(1)(d); however, it would be a violation of Section 63-11-30 (1)(b) regardless of the existence of a prescription if the person's driving ability was impaired. Mitchell, Feb. 3, 2006, A.G. Op. 05-0188.

RESEARCH REFERENCES

ALR.

What amounts to violation of drunken-driving statute in officer's "presence" or "view" so as to permit warrantless arrest. 74 A.L.R.3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statutes. 93 A.L.R.3d 7.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods. 96 A.L.R.3d 745.

Reckless driving as lesser included offense of driving while intoxicated or similar charge. 10 A.L.R.4th 1252.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage. 54 A.L.R.4th 149.

Alcohol-related vehicular homicide: nature and elements of offense. 64 A.L.R.4th 166.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver. 64 A.L.R.4th 272.

Driving while intoxicated: "choice of evils" defense that driving was necessary to protect life or property. 64 A.L.R.4th 298.

Cough medicine as "intoxicating liquor" under DUI statute. 65 A.L.R.4th 1238.

Operation of mopeds and motorized recreational two-, three-, and four-wheeled vehicles as within scope of driving while intoxicated statutes. 32 A.L.R.5th 659.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense. 52 A.L.R.5th 655.

Validity, construction, and application of statute permitting forfeiture of motor vehicle for operating while intoxicated. 89 A.L.R.5th 539.

Validity, construction, and operation of school "zero tolerance" policies towards drugs, alcohol, or violence. 117 A.L.R.5th 459.

Vertical gaze nystagmus test: Use in impaired driving prosecution. 117 A.L.R.5th 491.

Claim of diabetic reaction or hypoglycemia as defense in prosecution for driving while under influence of alcohol or drugs. 17 A.L.R.6th 757.

Assimilation, under Assimilative Crimes Act (18 U.S.C.A. § 13), of state statutes relating to driving while intoxicated or under influence of alcohol. 175 A.L.R. Fed. 293.

Am. Jur.

19 Am. Jur. Trials 123, Defense on Charge of Driving While Intoxicated.

34 Am. Jur. Trials 499, Failure to Protect the Public from an Intoxicated Driver.

17 Am. Jur. Proof of Facts 2d 1, Defense to Charge of Driving Under the Influence of Alcohol.

1 Am. Jur. Proof of Facts 3d 545, Negligent Failure to Detain Intoxicated Motorist.

9 Am. Jur. Proof of Facts 3d 459, Proof and disproof of alcohol-induced driving impairment through evidence of observable intoxication and coordination testing.

§ 63-11-31. Interlock restricted license; ignition interlock device; impoundment or immobilization of vehicles; use of Interlock Device Fund to offset cost of device installation and operation by indigent offenders; reinstatement of license without interlock restriction.

(1)(a) The provisions of this section are supplemental to the provisions of Section 63-11-30.

(b)(i) "Ignition-interlock device" means a device approved by the Department of Public Safety that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if the driver's blood alcohol level exceeds the calibrated setting on the device.

(ii) "Interlock-restricted license" means a driver's license bearing a restriction that limits the person to operation of vehicles equipped with an ignition-interlock device.

(iii) "Court-ordered drug-testing program" means a program that qualifies under Section 63-11-31.1.

(c) A person who can exercise the privilege of driving only under an interlock-restricted license must have an ignition-interlock device installed and operating on all motor vehicles owned or operated by the person.

(d) A person who installs an ignition-interlock device may obtain an interlock-restricted license.

(2)(a)(i) The cost of installation and operation of an ignition-interlock device shall be borne by the person to whom an interlock-restricted driver's license is issued, and the costs of court-ordered drug testing shall be borne by the person so ordered, unless the person is determined by the court to be indigent.

(ii) The cost of participating in a court-ordered drug-testing program shall be borne by the person, unless the person is determined by the court to be indigent.

(b)(i) A person convicted under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Fifty Dollars ($50.00), to be deposited in theInterlock Device Fund in the State Treasury unless the person is determined by the court to be indigent.

(ii) A person nonadjudicated under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Two Hundred Fifty Dollars ($250.00) to be deposited in the Interlock Device Fund in the State Treasury unless the person is determined by the court to be indigent.

(3)(a) The Department of Public Safety shall promulgate rules and regulations for the use of an ignition-interlock device. The Department of Public Safety shall approve which vendors shall be used to furnish the systems, may assess fees to the vendors, and shall prescribe the maximum costs to the offender for installation, removal, monthly operation, periodic inspections, calibrations and repairs.

(b) A person who has an ignition-interlock device installed in a vehicle shall:

(i) Provide proof of the installation of the device and periodic reporting for verification of the proper operation of the device;

(ii) Have the system monitored for proper use and accuracy as required by departmental regulation;

(iii) Pay the reasonable cost of leasing or buying, monitoring, and maintaining the device unless the person is determined to be indigent; and

(iv) Obtain an ignition-interlock driver's license.

(4)(a)(i) A person who is limited to driving only under an interlock-restricted driver's license shall not operate a vehicle that is not equipped with an ignition-interlock device.

(ii) A person prohibited from operating a motor vehicle that is not equipped with an ignition-interlock device may not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

(iii) A person may not start or attempt to start a motor vehicle equipped with an ignition-interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not equipped with an ignition-interlock device.

(iv) A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition-interlock device that has been installed in a motor vehicle.

(v) A person may not knowingly provide a motor vehicle not equipped with a functioning ignition-interlock device to another person who the provider of the vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition-interlock device.

(b) A violation of this subsection (4) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) or imprisoned for not more than six (6) months, or both, unless the starting of a motor vehicle equipped with an ignition-interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the restriction does not operate the vehicle.

(5) In order to obtain an interlock-restricted license, a person must:

(a) Be otherwise qualified to operate a motor vehicle, and will be subject to all other restrictions on the privilege to drive provided by law;

(b) Submit proof that an ignition-interlock device is installed and operating on all motor vehicles operated by the person; and

(c) Pay the fee set forth in Section 63-1-43 to obtain the license without regard to indigence; no license reinstatement fee under Section 63-1-46 shall be charged for a person obtaining an interlock-restricted license.

(6)(a) In addition to the penalties authorized for any second or subsequent conviction under Section 63-11-30, the court shall order that all vehicles owned by the offender that are not equipped with an ignition-interlock device must be either impounded or immobilized pending further order of the court lifting the offender's driving restriction. However, no county, municipality, sheriff's department or the Department of Public Safety shall be required to keep, store, maintain, serve as a bailee or otherwise exercise custody over a motor vehicle impounded under the provisions of this section. The cost associated with any impoundment or immobilization shall be paid by the person convicted without regard to ability to pay.

(b) A person may not tamper with, or in any way attempt to circumvent, vehicle immobilization or impoundment ordered by the court under this section. A violation of this paragraph (b) is a misdemeanor and, upon conviction, the violator shall be fined an amount not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) or imprisoned for not more than six (6) months, or both.

(7)(a) The Department of Public Safety shall promulgate rules and regulations for the use of monies in the Interlock Device Fund to offset the cost of interlock device installation and operation by and court-ordered drug testing of indigent offenders.

(b) The court shall determine a defendant's indigence based upon whether the defendant has access to adequate resources to pay the ignition-interlock fee and the costs of installation and maintenance of an ignition-interlock device, or the costs of court-ordered drug testing or both, and may further base the determination of indigence on proof of enrollment in one or more of the following types of public assistance:

(i) Temporary Assistance for Needy Families (TANF);

(ii) Medicaid assistance;

(iii) The Supplemental Nutritional Assistance Program (SNAP), also known as "food stamps";

(iv) Supplemental security income (SSI);

(v) Participation in a federal food distribution program;

(vi) Federal housing assistance;

(vii) Unemployment compensation; or

(viii) Other criteria determined appropriate by the court.

(c) No more than ten percent (10%) of the money in the Interlock Device Fund in any fiscal year shall be expended by the department for the purpose of administering the fund.

(d) The Commissioner of the Department of Public Safety must promulgate regulations for the program and for vendors, including at a minimum:

(i) That the offender must pay the cost of the testing program or, if the court finds the offender to be indigent, that the cost be paid from the Interlock Device Fund.

(ii) How indigent funds will be accessed by the vendors, and the maximum cost to the offender or the fund.

(e)(i) Money in the Interlock Device Fund will be appropriated to the department to cover part of the costs of court-ordered drug testing and installing, removing and leasing ignition-interlock devices for indigent people who are required, because of a conviction or nonadjudication under Section 63-11-30, to install an ignition-interlock device in all vehicles operated by the person.

(ii) If money is available in the Interlock Device Fund, the department shall pay to the vendor, for one (1) vehicle per offender, up to Fifty Dollars ($50.00) for the cost of installation, up to Fifty Dollars ($50.00) for the cost of removal, and up to Thirty Dollars ($30.00) monthly for verified active usage of the ignition-interlock device. The department shall not pay any amount above what an offender would be required to pay for the installation, removal or usage of an ignition-interlock device.

(iii) If money is available in the Interlock Device Fund, the department shall pay to the vendor an amount not to exceed that promulgated by the Forensics Laboratory for court-ordered drug testing. The department shall not pay any amount above what an offender would be required to pay individually.

(8) In order to reinstate a form of driver's license that is not restricted to operation of an ignition-interlock equipped vehicle, the person must submit proof to the Department of Public Safety to substantiate the person's eligibility for an unrestricted license, which may be a court order indicating completion of sentence or final order of nonadjudication; in the absence of a court order, the proof may consist of the following or such other proof as the commissioner may set forth by regulation duly adopted under the Administrative Procedures Act:

(a) Proof of successful completion of an alcohol safety program as provided in Section 63-11-32 if so ordered by the court;

(b) Payment of the reinstatement fee required under Section 63-1-46(1)(a);

(c) Payment of the driver's license fee required under Section 63-1-43;

(d) A certificate of liability insurance or proof of financial responsibility; and

(e)(i) For those driving under an interlock-restricted license, a declaration from the vendor, in a form provided or approved by the Department of Public Safety, certifying that there have been none of the following incidents in the last thirty (30) days:

1. An attempt to start the vehicle with a breath alcohol concentration of 0.04 or more;

2. Failure to take or pass any required retest; or

3. Failure of the person to appear at the ignition-interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device; or

(ii) For a person who violated Section 63-11-30 with respect to drugs other than alcohol, proof of successful compliance with all court-ordered drug testing; or

(iii) Both subparagraphs (i) and (ii) of this paragraph (e) if applicable.

(9) The court may extend the interlock-restricted period if the person had a violation in the last thirty (30) days.

(10) The court that originally ordered installation of the ignition-interlock device for a violation of Section 63-11-30 and a court in the municipality or county in which the violation occurred have jurisdiction over an offense under this section.

(11) A person who voluntarily obtains an interlock-restricted license may convert at any time to any other form of license for which the person is qualified.

(12)(a) The Department of Public Safety shall require all manufacturers of ignition-interlock devices to report ignition-interlock data in a consistent and uniform format as prescribed by the Department of Public Safety. Ignition-interlock vendors must also use the uniform format when sharing data with courts ordering an ignition interlock, with alcohol safety education programs, or with other treatment providers.

(b) The Department of Public Safety shall require all vendors of drug testing programs approved under Section 63-11-31.1 to report test results in a consistent and uniform format as prescribed by the Forensics Laboratory. Vendors must report test results to the court on a monthly basis, except that a positive test or failure of the testing participant to submit to verification must be reported to the court within five (5) days of verification of the positive test or the failure to submit.

HISTORY: Laws, 2000, ch. 542, § 1; Laws, 2001, ch. 477, § 1; Laws, 2013, ch. 489, § 2; Laws, 2014, ch. 493, § 2; Laws, 2015, ch. 478, § 3; Laws, 2016, ch. 503, § 6, eff from and after Oct. 1, 2016; Laws, 2018, ch. 447, § 2, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (2)(b)(ii) by inserting "Interlock Device" preceding "Fund" near the end. The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Notes — A prior § 63-11-31 [Codes, 1942, §§ 8175-04, 8175-05; Laws, 1971, ch. 515, §§ 4, 5] was repealed by Laws of 1981, ch. 491, § 16, effective from and after July 1, 1981. That section made it unlawful to operate a vehicle while under the influence of intoxicating liquor, and provided the penalties for a violation.

Cross References — Ignition-Interlock Device Fund, see § 63-1-43.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Although federal regulations allow the revocation or suspension of a motor vehicle license plate in order to immobilize a motor vehicle, the statute does not provide for revocation or suspension of a tag. White, Jr., Nov. 27, 2000, A.G. Op. #2000-0662.

Confiscation of a vehicle license plate does not constitute immobilization or impoundment. White, Jr., Nov. 27, 2000, A.G. Op. #2000-0662.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of ignition interlock laws. 15 A.L.R.6th 375.

§ 63-11-31.1. Mississippi Forensics Laboratory to promulgate rules and regulations for court-ordered drug testing of DUI/other drug violators; evaluation of proposals made by and approval of vendors to be utilized by trial courts.

(1) The Mississippi Forensics Laboratory shall promulgate rules and regulations for court-ordered drug testing of DUI/other drug violators and shall approve which vendors are eligible to be utilized by the trial courts when ordering defendants to undergo drug testing as a condition of continuing to exercise the privilege to drive. The Forensics Laboratory may assess fees to the vendors, and shall prescribe the maximum costs to the offender for drug testing. The Forensics Laboratory may seek the advice of the State Intervention Court Advisory Committee in fulfilling these duties.

(2) The Forensics Laboratory must evaluate proposals made by prospective vendors for acceptability, including, without limitation, the following factors:

(a) A description of the method used for assessment;

(b) The frequency with which the offender will be tested;

(c) The procedure used by the vendor to ensure the accuracy of the test results;

(d) The length of time allowed the offender to provide a biological sample after being given notice;

(e) The frequency with which the vendor will make reports to the court;

(f) The list of approved sites for the collection of biological samples for testing.

(3) The Forensics Laboratory must promulgate regulations for the program and for vendors, including at a minimum:

(a) That the offender must pay the cost of the testing program or, if the court finds the offender to be indigent, that the cost be paid from the Interlock Device Fund.

(b) How indigent funds will be accessed by the vendors, and the maximum cost to the offender or the fund.

(4) The Forensics Laboratory will provide the list of approved vendors, subject to continuous updating, to the Mississippi Judicial College for dissemination to the trial courts.

HISTORY: Laws, 2018, ch. 447, § 1, eff from and after July 1, 2020; Laws, 2019, ch. 466, § 26, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

§ 63-11-32. Development, implementation and funding of driver improvement program for first offenders convicted of driving while intoxicated or under influence of another substance which impairs ability to operate motor vehicle.

(1) The State Department of Public Safety in conjunction with the Governor's Highway Safety Program, the State Board of Health, or any other state agency or institution shall develop and implement a driver improvement program for persons identified as first offenders convicted of driving while under the influence of intoxicating liquor or another substance which had impaired such person's ability to operate a motor vehicle, including provision for referral to rehabilitation facilities.

(2) The program shall consist of a minimum of ten (10) hours of instruction. Each person who participates shall pay a nominal fee to defray a portion of the cost of the program.

(3) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Mississippi Alcohol Safety Education Program Fund." Monies deposited in such fund shall be expended by the Board of Trustees of State Institutions of Higher Learning as authorized and appropriated by the Legislature to defray the costs of the Mississippi Alcohol Safety Education Program operated pursuant to the provisions of this section. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the General Fund.

(4) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Federal-State Alcohol Program Fund." Monies deposited in such fund shall be expended by the Department of Public Safety as authorized and appropriated by the Legislature to defray the costs of alcohol and traffic safety programs. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the General Fund.

(5) Such assessments as are collected under subsection (2) of Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "Mississippi Forensics Laboratory Implied Consent Law Fund." Monies deposited in such fund shall be expended by the Department of Public Safety as authorized and appropriated by the Legislature to defray the costs of equipment replacement and operational support of the Mississippi Forensics Laboratory relating to enforcement of the Implied Consent Law. Any revenue in the fund which is not encumbered at the end of the fiscal year shall not lapse to the General Fund but shall remain in the fund.

HISTORY: Laws, 1973, ch. 408, § 1; Laws, 1979, ch. 305; Laws, 1981, ch. 491, § 7; Laws, 1983, ch. 466, § 8; Laws, 1990, ch. 329, § 11; Laws, 1991, ch. 356 § 2; Laws, 1996, ch. 527, § 12; Laws, 2015, ch. 452, § 17, eff from and after July 1, 2015.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act.

Laws of 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

Cross References — Court ordering completion of alcohol safety education program by one convicted of driving while intoxicated or under influence of other substance which impairs ability to operate motor vehicle, see § 63-11-30.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Horseback riding or operation of horse-drawn vehicle as within drunk driving statute. 71 A.L.R.4th 1129.

§ 63-11-33. Interlock Device Fund; purpose; use of monies.

There is created in the State Treasury a special fund to be known as the Interlock Device Fund. The purpose of the fund shall be to provide funding for the Driver's License Bureau of the Department of Public Safety and also to provide funding assistance for ignition interlock devices and court-ordered drug testing for persons determined to be unable to afford the installation and maintenance of an ignition interlock device or costs of drug testing. Monies from the fund shall be distributed by the State Treasurer upon warrants issued by the Department of Public Safety. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Driver's License Bureau;

(b) The interest accruing to the fund;

(c) Monies paid by a person for deposit into the fund under Section 63-11-31; and

(d) Monies received from such other sources as may be provided by law.

HISTORY: Laws, 2014, ch. 493, § 5, eff from and after July 1, 2014; Laws, 2018, ch. 447, § 3, eff from and after July 1, 2020.

Editor's Notes — A former 63-11-33 [Codes, 1942, §§ 8175-04, 8175-06, 8175-07; Laws, 1971, ch. 515, §§ 4, 6, 7; Repealed by Laws, 1981, ch. 491, § 16, effective from and after July 1, 1981] made it unlawful to operate a vehicle under the influence of intoxicating liquor, and provided the penalties where chemical test results were not available.

§ 63-11-35. Repealed.

Repealed by Laws, 1981, ch. 491, § 16, eff from and after July 1, 1981.

§ 63-11-35. [Codes, 1942, §§ 8175-04, 8175-06, 8175-07; Laws, 1971, ch. 515, §§ 4, 6, 7]

Editor's Notes — Former § 63-11-35 made it unlawful to operate a vehicle while intoxicated, and provided the penalties for a violation.

§ 63-11-37. Contents and disposition of record of conviction under § 63-11-30.

(1) It shall be the duty of the trial judge, upon conviction of a person under Section 63-11-30, to mail or otherwise deliver in a method prescribed by the commissioner a true and correct copy of the traffic ticket, citation or affidavit evidencing the arrest that resulted in the conviction and a certified copy of the abstract of the court record within five (5) days to the Commissioner of Public Safety at Jackson, Mississippi. The trial judge in municipal and justice courts shall show on the docket and the trial judge in courts of record shall show on the minutes:

(a) Whether a chemical test was given and the results of the test, if any; and

(b) Whether conviction was based in whole or in part on the results of such a test.

(2) The abstract of the court record shall show the date of the conviction, the results of the test if there was one, and the penalty, so that a record of same may be made by the Department of Public Safety.

(3) For the purposes of Section 63-11-30, a bond forfeiture shall operate as and be considered as a conviction.

(4) A trial court clerk who fails to provide a true and correct copy of the traffic ticket, citation or affidavit evidencing the arrest that resulted in the conviction and a copy of the abstract of the court record within five (5) days of the availability of that information as required in subsection (1) of this section is guilty of a civil violation and shall be fined One Hundred Dollars ($100.00), for which civil fine the clerk bears sole and personal responsibility. Each instance of failure is a separate violation.

HISTORY: Codes, 1942, § 8175-08; Laws, 1971, ch. 515, § 8; Laws, 1981, ch. 491, § 8; Laws, 1983, ch. 466, § 9; Laws, 1985, ch. 346; Laws, 1991, ch. 480, § 7; Laws, 2016, ch. 503, § 7; Laws, 2017, ch. 428, § 2, eff from and after Oct. 1, 2017.

Editor's Notes — Laws of 1981, ch. 491, § 15, provides as follows:

"SECTION 15. Prosecutions, convictions and penalties for violations which occurred prior to the effective date of this act under laws amended or repealed by this act, or suspensions or denials of driver's licenses or permits made pursuant to laws amended or repealed by this act, shall not be affected or abated by the provisions of this act."

Laws of 1983, ch. 466, § 12, eff from and after July 1, 1983, provides as follows:

"SECTION 12. Prosecutions, convictions and penalties for violations which occurred prior to July 1, 1983, under laws amended by this act, and suspensions or denials of driver's licenses, permits or privileges made pursuant to laws amended by this act, shall not be affected or abated by the provisions of this act. In addition, convictions which occurred prior to July 1, 1983, under laws amended by this act shall be counted for the purposes of determining the penalties which shall be imposed on any person convicted for a second or subsequent offense under the provisions of the laws amended by this act."

JUDICIAL DECISIONS

1. In general.

The conduct of a justice court judge warranted his removal from office where, during a 3-year period, he adjudicated approximately 28 driving under the influence cases wherein he did not file an abstract of the court record of convictions with the Commissioner of Public Safety as required by § 63-11-37 and he adjudicated approximately 552 routine traffic convictions but failed to report these to the Department of Public Safety as required by § 63-9-17. In re Quick, 553 So. 2d 522, 1989 Miss. LEXIS 484 (Miss. 1989).

RESEARCH REFERENCES

ALR.

Admissibility of traffic conviction in later state civil trial. 73 A.L.R.4th 691.

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 475 (complaint, petition, or declaration-by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 63-11-39. Reduction of charges under chapter.

The court having jurisdiction or the prosecutor shall not reduce any charge under this chapter to a lesser charge.

HISTORY: Laws, 1992, ch. 500, § 5; Laws, 1996, ch. 527, § 13, eff from and after July 2, 1996.

Editor's Notes — A former § 63-11-39 [Codes, 1942, § 8175-15; Laws, 1971, ch. 515, § 15; Laws, 1981, ch. 491, § 10; Laws, 1983, ch. 466, § 10], which allowed admission of evidence of a person's refusal to take a chemical test of his blood and prohibited reduction of a driving under the influence charge, was repealed by Laws of 1991, ch. 573, § 141.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2.-10. [Reserved for future use].
11. Under former law.

1. In general.

Sole function of statute was to prohibit reduction of DUI charges to non-DUI charges, the modifying phrase "under this chapter," signifying DUI offenses, was not repeated after the phrase "to a lesser charge." Ostrander v. State, 803 So. 2d 1172, 2002 Miss. LEXIS 8 (Miss. 2002).

Reducing three citations for driving under influence (DUI) in violation of statute precluding such reductions, assessing costs of fines in excess of statutory maximum in six criminal cases, failing to require affidavits in four criminal cases, issuing orders without authority, and allowing cameras in courtroom warranted public reprimand, fine of $2,628, and assessment of costs. Mississippi Comm'n on Judicial Performance v. Emmanuel, 688 So. 2d 222, 1996 Miss. LEXIS 692 (Miss. 1996).

Justice court judge improperly handled driving under the influence charges (DUI) and acted beyond his legal authority in violation of judicial canons when he reduced charges to possession of beer and whiskey because prosecuting attorney informed him that evidence was not clear as to whether defendant was driving and that he had an agreement with defendant to pay fines on lesser charge. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

2.-10. [Reserved for future use].

11. Under former law.

Trial court did not err in refusing to exclude the results of defendant's urine analysis performed by a hospital employee simply because the employee did not hold a valid permit from the State Crime Laboratory (Mississippi) pursuant to Miss. Code Ann. § 63-11-19; because the employee, who had 40 years experience, was clearly qualified to perform the analysis at issue, and defendant did not question the credibility of the test or the procedures used by the employee in performing the analysis, the court found that the test was reasonable and the results admissible under Miss. Code Ann. §§ 63-11-39, 63-11-13. Jones v. State, 881 So. 2d 209, 2002 Miss. App. LEXIS 869 (Miss. Ct. App. 2002), aff'd, 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

Miss. Code Ann. § 63-11-13 makes clear that test results from persons performing analyses at the behest of the accused may be admitted, and the language in § 63-11-13, regarding "any other test" is comparable to the language in former Miss. Code Ann. § 63-11-39(2), which authorized admission of "any other competent evidence" bearing upon the issue of whether a person was intoxicated; clearly "any other test," properly administered under appropriate procedures and designed to determine the alcohol or drug content of one's blood or urine, constitutes other competent evidence. Jones v. State, 881 So. 2d 209, 2002 Miss. App. LEXIS 869 (Miss. Ct. App. 2002), aff'd, 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

In a prosecution for homicide by culpable negligence, results of a blood test revealed that the defendant had considerably more than .10 percent alcohol content in his blood, the demarcation under § 63-11-39 between a presumption of whether he was driving under the influence of intoxicating liquor. Williams v. State, 434 So. 2d 1340, 1983 Miss. LEXIS 2727 (Miss. 1983), but see Fisher v. Eupora, 587 So. 2d 878, 1991 Miss. LEXIS 669 (Miss. 1991).

A chemical analysis of defendant's blood performed by an individual not possessing a valid permit issued by the State Board of Health for making such analysis (Code 1972 § 63-11-19) was nevertheless admissible as other competent evidence under Code 1972 § 63-11-39 where evidence detailed in opinion established that test was reasonable. Cutchens v. State, 310 So. 2d 273, 1975 Miss. LEXIS 1902 (Miss. 1975), cert. denied, 423 U.S. 1061, 96 S. Ct. 799, 46 L. Ed. 2d 652, 1976 U.S. LEXIS 1092 (U.S. 1976).

OPINIONS OF THE ATTORNEY GENERAL

Section 63-11-39, as reinstated, applies to all cases pending from and after effective date. Simpson, Nov. 5, 1992, A.G. Op. #92-0815.

Miss. Code Section 63-11-39 does not limit court at trial on merits on ultimate disposition of case; it prohibits reduction of charge at any stage of proceeding, but not dismissals or final verdicts. Cooke, June 9, 1993, A.G. Op. #93-0239.

Term "lesser charge" referred to in statute means non-DUI offenses and charge of DUI second or DUI third may be changed by amendment to DUI first or DUI second, if facts warrant. Moffett, July 19, 1993, A.G. Op. #93-0437.

Statute only applies to cases where defendant is charged with driving under influence of liquor or alcohol and therefore charge of driving under influence of other substance could be reduced on motion of prosecutor. Clinton, June 30, 1994, A.G. Op. #93-0436.

Based on this section, a DUI charge may only be reduced to a non-DUI offense if there is no BAC (blood alcohol content) reading of .10%. If there is no BAC reading, the DUI charge may be reduced by the court on a motion by the prosecutor. Spencer, April 5, 1996, A.G. Op. #96-0154.

The amendment to Section 63-11-39 went into effect July 2, 1996. Therefore, no DUI charge may be reduced to a non-DUI charge after July 2, 1996, regardless of when the offense occurred. Emfinger, September 6, 1996, A.G. Op. #96-0617.

Under this section, there is no prohibition against reducing a DUI charge if the defendant registers below .10 on the intoxilyzer. Childers, July 8, 1996, A.G. Op. #96-0444.

A municipal prosecuting attorney may not request a court to reduce a third offense of driving under the influence charge to a second offense as a municipal court does not have jurisdiction over such a charge; instead, after a probable cause finding, the municipal court should bind such a case over to the grand jury and, once a case has been bound over, it must be heard by the grand jury. Johnston, Feb. 26, 2002, A.G. Op. #01-0780.

Amending a charge of violation of § 63-11-40 to a violation of § 63-1-57 when the facts of the case do not merit such an amendment would constitute a violation of this section. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

RESEARCH REFERENCES

ALR.

Drunk driving: motorist's right to private sobriety test. 45 A.L.R.4th 11.

Am. Jur.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 982-993, 995.

2 Am. Jur. Proof of Facts 585, Blood Tests.

17 Am. Jur. Proof of Facts 2d 1, Defense to Charge of Driving Under Influence of Alcohol.

CJS.

61A C.J.S., Motor Vehicles §§ 1592-1613, 1619, 1620.

§ 63-11-40. Driving while driving license or privilege cancelled, suspended or revoked.

Any person whose driver's license, or driving privilege has been cancelled, suspended or revoked under the provisions of this chapter and who drives any motor vehicle upon the highways, streets or public roads of this state, while such license or privilege is cancelled, suspended or revoked, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than forty-eight (48) hours nor more than six (6) months, and fined not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00).

The commissioner of public safety shall suspend the driver's license or driving privilege of any person convicted under the provisions of this section for an additional six (6) months. Such suspension shall begin at the end of the original cancellation, suspension or revocation and run consecutively.

HISTORY: Laws, 1983, ch. 466, § 11, eff from and after July 1, 1983.

Cross References — Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Statute providing penalties for operation of vehicle while under influence of intoxicating liquor or other substance provides only for concurrent suspension periods for multiple offenses; time of license suspension begins to run when Commissioner of Public Safety receives abstract of judgment and issues order of suspension, regardless of whether some other period of suspension is also running. Department of Pub. Safety v. Prine, 687 So. 2d 1116, 1996 Miss. LEXIS 62 (Miss. 1996).

OPINIONS OF THE ATTORNEY GENERAL

If an individual has his license suspended under § 63-11-23 prior to going to court, and is subsequently charged with violating this section, an acquittal for the original DUI charge has no effect on the charge for driving with license suspended for DUI. Hester, May 21, 1999, A.G. Op. #99-0242.

An individual who has had his driving privileges revoked may be charged under the statute for driving while his driving privileges are suspended even though he never had a valid driver's license to begin with. Franklin, May 17, 2002, A.G. Op. #02-0260.

Amending a charge of violation of this section to a violation of § 63-1-57 when the facts of the case do not merit such an amendment would constitute a violation of § 63-11-39 this section. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

§ 63-11-41. Admissibility in criminal prosecution of evidence of refusal to submit to chemical test.

If a person under arrest refuses to submit to a chemical test under the provisions of this chapter, evidence of refusal shall be admissible in any criminal action under this chapter.

HISTORY: Codes, 1942, § 8175-22; Laws, 1971, ch. 515, § 22, eff from and after April 1, 1972.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.

1. In general.

Because a urine test was a chemical test under Miss. Code Ann. § 63-11-3(c) (Rev. 2013), defendant's refusal to take the test was admissible. Schlepphorst v. State, 201 So. 3d 517, 2016 Miss. App. LEXIS 126 (Miss. Ct. App.), cert. denied, 203 So. 3d 1134, 2016 Miss. LEXIS 418 (Miss. 2016).

In a driving under the influence case, defendant's failure to submit to the Intoxilizyer 8000 was properly admitted into evidence where the State submitted sufficient evidence of intoxication. The evidence was relevant and admissible. Nolan v. State, 182 So. 3d 484, 2016 Miss. App. LEXIS 21 (Miss. Ct. App. 2016).

Mention of defendant's past DUI experiences during the State's closing argument were not improper because the fact that defendant refused to blow was evidence, which was strengthened by the fact defendant had been through it before and understood the consequences of blowing above the legal limit. Snyder v. State, 174 So. 3d 331, 2015 Miss. App. LEXIS 457 (Miss. Ct. App. 2015).

Trial court did not err in allowing the State to mention defendant's prior DUI's during an officer's testimony because the State's questions were crafted to get to the reason why defendant refused to take the field sobriety and breathalyzer test, which was relevant and admissible; the evidence was admitted to show knowledge and intent because the State mentioned defendant's prior experience with field sobriety and breathalyzer tests to prove he knew he was intoxicated and would fail the tests. Snyder v. State, 174 So. 3d 331, 2015 Miss. App. LEXIS 457 (Miss. Ct. App. 2015).

Evidence was sufficient to support defendant's driving under the influence conviction where two police officers smelled alcohol emitting from defendant's vehicle, defendant exhibited physical signs of impairment during field sobriety tests, and defendant refused to submit to an Intoxilyzer test, which was admissible pursuant to Miss. Code Ann. § 63-11-41. Lobo v. City of Ridgeland, 135 So. 3d 148, 2013 Miss. App. LEXIS 300 (Miss. Ct. App. 2013).

Evidence was sufficient to support defendant's conviction for common law DUI under Miss. Code Ann. § 63-11-30(1)(a) (Rev. 2004) as it showed that defendant admitted to the officer who stopped his vehicle that he had drunk two beers while he was driving, that he also admitted that he had drunk liquor and beer earlier in the day, that the officer smelled a strong odor of alcohol coming from defendant and observed defendant's glassy eyes, and that defendant refused to field sobriety test and the chemical test. Evidence that defendant refused the chemical test was admissible pursuant to Miss. Code Ann. § 63-11-41 (Rev. 2004) and Miss. R. Evid. 402. Ellis v. State, 77 So. 3d 1119, 2011 Miss. App. LEXIS 223 (Miss. Ct. App. 2011), cert. denied, 78 So. 3d 906, 2012 Miss. LEXIS 25 (Miss. 2012).

During defendant's trial for DUI, the court did not err in considering defendant's refusal to submit to a breathalyzer test because the evidence was admissible under the statute and relevant. Knight v. State, 14 So. 3d 76, 2009 Miss. App. LEXIS 484 (Miss. Ct. App. 2009).

In a prosecution for driving a motor vehicle while under the influence of intoxicating liquor, the admission into evidence under § 63-11-41 of the defendant's refusal to take a breathalyzer test did not violate the Fifth Amendment to the United States Constitution and Article 3, § 26 of the Mississippi Constitution, even though the defendant was not specifically warned that his refusal could be admitted into evidence against him; the penalty of introducing a refusal serves an important state interest in encouraging defendants to submit to a chemical test, and as the refusal is physical instead of testimonial, its introduction into evidence violates neither the Fifth Amendment nor § 26. Ricks v. State, 611 So. 2d 212, 1992 Miss. LEXIS 819 (Miss. 1992).

2. Constitutionality.

During defendant's trial for felony DUI, third offense, the admittance of defendant's refusal to submit to a breath test was not a violation of his right against self-incrimination under either Miss. Const. Art. 3, § 26 or USCS Const. Amend. 5; thus, defendant's challenge to the constitutionality of Miss. Code Ann. § 63-11-41 failed. Starkey v. State, 941 So. 2d 899, 2006 Miss. App. LEXIS 827 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 352-356.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

CJS.

61A C.J.S., Motor Vehicles §§ 1592-1613.

§ 63-11-43. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 63-11-43. [Codes, 1942, § 8175-23; Laws, 1971, ch. 515, § 23]

Editor's Notes — Former § 63-11-43 related to admissibility of test results or of submission or nonsubmission to test in civil case.

§ 63-11-45. Denial of insurance coverage on ground of refusal to submit to test or upon basis of test results.

No coverage otherwise afforded under any policy of insurance shall be denied on the ground that any person has refused any test provided for by this chapter nor on the basis of the results of any such test. Any provision to such effect in any insurance policy hereinafter issued shall be void.

HISTORY: Codes, 1942, § 8175-25; Laws, 1971, ch. 515, § 29, eff from and after April 1, 1972.

JUDICIAL DECISIONS

1. In general.

In a suit by a minor driver against a insurer seeking coverage for injuries suffered in a one-car accident, the minor's excessive blood alcohol level was admissible because the blood was tested by a hospital, not by a police officer; its admission did not violate Miss. Code Ann. § 63-11-45 because the test did not fall within the implied consent law. Allen v. Clarendon Nat'l Ins. Co., 2006 U.S. Dist. LEXIS 64602 (S.D. Miss. Sept. 8, 2006).

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. Proof of Facts 3d 229, Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing.

4 Am. Jur. Proof of Facts 3d 439, Unreliability of the Horizontal Gaze Nystagmus Test.

§ 63-11-47. Selection and purchase of equipment and supplies.

The Commissioner of Public Safety, acting in concert with the Mississippi Forensics Laboratory created pursuant to Section 45-1-17, is hereby expressly authorized and directed to determine the equipment and supplies which are adequate and necessary from both a medical and law enforcement standpoint for administration of this chapter. The Commissioner of Public Safety, upon receiving such recommendation from the Mississippi Forensics Laboratory, shall recommend an equipment standard for such equipment to the Department of Finance and Administration. The Department of Finance and Administration, using such a uniform standard for said equipment, shall advertise its intention of purchasing said equipment by one (1) publication in at least one (1) newspaper having general circulation in the State of Mississippi at least ten (10) days before the purchase of such equipment and supplies, and the advertisement shall clearly and distinctly describe the articles to be purchased, and shall receive sealed bids thereon which shall be opened in public at a time and place to be specified in the advertisement.

The Department of Finance and Administration shall accept the lowest and best bid for said equipment and supplies; in its discretion, it may reject any and all bids submitted. The lowest and best bid for said equipment and supplies accepted by the Department of Finance and Administration shall be the state-approved price of said equipment for purchase by the state, county and city governments.

Title to all such testing equipment in the state purchased hereunder shall remain in the Commissioner of Public Safety regardless of what entity pays the purchase price.

The state, counties and municipalities may purchase in the name of the Commissioner of Public Safety such equipment and supplies from other vendors of said equipment and supplies necessary to implement this chapter, provided they purchase of the same quality and standard as certified to the Department of Finance and Administration and approved by the department. However, such equipment and supplies shall not be purchased by the state, counties and municipalities unless it is at a price equivalent to or lower than that approved by the Department of Finance and Administration, pursuant to the bid procedure as outlined herein.

HISTORY: Codes, 1942, § 8175-26; Laws, 1971, ch. 515, § 30; Laws, 1981, ch. 491, § 13; Laws, 1984, ch. 488, § 263; Laws, 2015, ch. 452, § 18, eff from and after July 1, 2015.

JUDICIAL DECISIONS

1. In general.

Duties and responsibilities, including allowing authority for Educational Television to contract (§ 37-63-11), giving concurrence for the use of funds to travel outside the continental United States (§ 25-3-41), advertising for and accepting bids on equipment for the State Crime Laboratory (§ 63-11-47), granting authority for the purchase of motor vehicles by state departments, institutions, or agencies (§ 25-1-77), and approving dispersement of funds by the Mississippi Air and Water Pollution Commission (§ 49-17-13), are administrative functions within the prerogative of the executive department, and statutes vesting those powers and functions in members of the legislature violate Miss. Const. Art. 1 § 2 and are unconstitutional. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

§§ 63-11-49 through 63-11-53. Repealed.

Repealed by Laws of 2016, ch. 503, §§ 10-12, effective from and after October 1, 2016.

§ 63-11-49. [Laws, 1992, ch. 500, § 2; Laws, 1996, ch. 527, § 14, eff from and after July 2, 1996.]

§ 63-11-51. [Laws, 1992, ch. 500, § 3; Laws, 1996, ch. 527, § 15, eff from and after July 2, 1996.]

§ 63-11-53. [Laws, 1992, ch. 500, § 4; Laws, 1996, ch. 527, § 16, eff from and after July 2, 1996.]

Editor's Notes — Former § 63-11-49 related to the authorization for the impoundment and forfeiture of vehicles seized under this chapter, the notice of intention to forfeit, forfeiture to a spouse under circumstances and judicial review.

Former § 63-11-51 related to the institution of forfeiture proceedings and the filing and service of petition for forfeiture.

Former § 63-11-53 related to the disposition of forfeited vehicles and the money derived from forfeited vehicles.

CHAPTER 13.

INSPECTION OF MOTOR VEHICLES

Sec.
63-13-1 through 63-13-29. Repealed.

§§ 63-13-1 through 63-13-29. Repealed.

Repealed by Laws of 2015, ch. 417, § 1, effective July 1, 2015.

§ 63-13-1. [Codes, 1942, § 8258-01; Laws, 1960, ch. 408, § 1, eff from and after January 1, 1961.]

§ 63-13-3. [Codes, 1942, § 8258-02; Laws, 1960, ch. 408, § 2; Laws, 1966, ch. 572, § 1, eff from and after passage (approved June 7, 1966).]

§ 63-13-5. [Codes, 1942, § 8258-05; Laws, 1960, ch. 408, § 5; Laws, 1964, ch. 456; Laws, 1968, ch. 544, § 1; Laws, 1980, ch. 561, § 24, eff from and after July 2, 1980.]

§ 63-13-7. [Codes, 1942, § 8258-05; Laws, 1960, ch. 408, § 5; Laws, 1964, ch. 456; Laws, 1968, ch. 544, § 1; Laws, 1972, ch. 389, § 1; Laws, 1991, ch. 556 § 1, eff from and after passage (approved April 12, 1991).]

§ 63-13-8. [Laws, 1977, ch. 317, § 1; Laws, 2005, ch. 328, § 3, eff from and after July 1, 2005.]

§ 63-13-9. [Codes, 1942, § 8258-05; Laws, 1960, ch. 408, § 5; Laws, 1964, ch. 456; Laws, 1968, ch. 544, § 1; Laws, 1982, ch. 437, § 7; Laws, 1995, ch. 475, § 22; Laws, 2005, ch. 328, § 2, eff from and after July 1, 2005.]

§ 63-13-11. [Codes, 1942, § 8258-05; Laws, 1960, ch. 408, § 5; Laws, 1964, ch. 456; Laws, 1968, ch. 544, § 1; Laws, 1972, ch. 389, § 1; Laws, 1976, ch. 396, § 6; Laws, 1986, ch. 500, § 52, eff from and after July 1, 1986.]

§ 63-13-13. [Codes, 1942, § 8258-09; Laws, 1960, ch. 408, § 9, eff from and after January 1, 1961.]

§ 63-13-15. [Codes, 1942, § 8258-06; Laws, 1960, ch. 408, § 6, eff from and after January 1, 1961.]

§ 63-13-17. [Codes, 1942, § 8258-07; Laws, 1960, ch. 408, § 7, eff from and after January 1, 1961.]

§ 63-13-19. [Codes, 1942, §§ 8258-04, 8258-07; Laws, 1960, ch. 408, §§ 4, 7; Laws, 1962, ch. 529, eff from and after passage (approved June 1, 1962).]

§ 63-13-21. [Codes, 1942, §§ 8258-03, 8258-04; Laws, 1960, ch. 408, §§ 3, 4; Laws, 1962, ch. 529; Laws, 1977, ch. 317, § 2, eff from and after passage (approved February 25, 1977).]

§ 63-13-23. [Codes, 1942, § 8258-04; Laws, 1960, ch. 408, § 4; Laws, 1962, ch. 529, eff from and after passage (approved June 1, 1962).]

§ 63-13-25. [Codes, 1942, § 8258-08; Laws, 1960, ch. 408, § 8, eff from and after January 1, 1961.]

§ 63-13-27. [Codes, 1942, § 8258-05; Laws, 1960, ch. 408, § 5; Laws, 1964, ch. 456; Laws, 1968, ch. 544, § 1; Laws, 1976, ch. 396, § 7, eff from and after July 1, 1976.]

§ 63-13-29. [Codes, 1942, § 8258-10; Laws, 1960, ch. 408, § 10, eff from and after January 1, 1961.]

Editor's Notes — Former § 63-13-1 provided the short title for Chapter 13.

Former § 63-13-3 prohibited the operation of vehicles without required properly operating equipment or in an unsafe mechanical condition.

Former § 63-13-5 related to the motor vehicle inspection department members and authority to promulgate rules and regulations for the administration and enforcement of the chapter.

Former § 63-13-7 required the periodic inspection and approval of motor vehicles, trailers and school buses and the display of the certificate of inspection and provided exemptions for certain motor vehicles.

Former § 63-13-8 provided a grace period for obtaining valid inspection stickers and the dismissal of charges of violating inspection law under certain circumstances.

Former § 63-13-9 provided certain details of the inspections and required certain vehicles to be inspected by representatives of the Liquefied Compressed Gas Board.

Former § 63-13-11 related to inspection fees and disposition of funds.

Former § 63-13-13 prohibited the issuance of a false certificate of inspection and the display of false or improperly obtained certificate of inspection.

Former § 63-13-15 related to the licensing of official inspection stations, the qualifications of inspectors and the inspection of stations.

Former § 63-13-17 prohibited the improper representation of an establishment as an official station and the issuance of a certificate by an unauthorized person.

Former § 63-13-19 required new and used car/truck dealers to inspect or have inspected each vehicle sold by the dealer.

Former § 63-13-21 authorized the Highway Safety Patrol to stop a vehicle believed to be unsafe or not properly equipped and require the driver to submit the vehicle to an inspection and if the vehicle is found to be unsafe to give the driver a written notice of defects.

Former § 63-13-23 required drivers to correct defects covered in a notice issued under former § 63-13-21.

Former §63-13-25 related to the effect of an inspection certificate and the effect of failure to discover defects during an inspection.

Former § 63-13-27 related to the administration of former Chapter 13.

Former § 63-13-29 provided penalties for violations of former Chapter 13.

CHAPTER 15.

MOTOR VEHICLE SAFETY — RESPONSIBILITY

Sec.
63-15-1. Short title.
63-15-3. Definitions.
63-15-4. Insurance card; exemptions; card to be kept in vehicle or displayed by electronic image; insurance company to provide; penalty.
63-15-5. Applicability of chapter to government owned vehicles.
63-15-7. Administration of chapter; judicial review of orders and acts of department.
63-15-9. Repealed.
63-15-11 through 63-15-21. Repealed.
63-15-23. Admissibility in evidence in civil actions of reports, etc. of department.
63-15-25. Certification to department of unsatisfied judgment; reports of convictions, pleas or actions in judicial proceedings for violations of motor vehicle laws.
63-15-27. Suspension of license, registration or operating privilege for nonpayment of judgment generally.
63-15-29. Duration of suspension; effect of discharge in bankruptcy.
63-15-31. Amounts required for satisfaction of judgment.
63-15-33. Allowance and effect of payment of judgment in installments; default.
63-15-35. Requirement of proof of financial responsibility upon conviction, etc., of offense requiring suspension or revocation of license.
63-15-37. Methods of giving proof of financial responsibility generally.
63-15-39. Certificate of insurance as proof of financial responsibility; residents.
63-15-41. Certificate of insurance as proof of financial responsibility; nonresidents.
63-15-43. Motor vehicle liability policy; definition; required provisions.
63-15-45. Notice of cancellation or termination of certified policy.
63-15-46. Premium reductions for older drivers successfully completing accident prevention course.
63-15-47. Applicability of chapter to policies of motor vehicle insurance.
63-15-49. Bond as proof of financial responsibility.
63-15-51. Deposit of cash or securities as proof of financial responsibility.
63-15-53. Self-insurance.
63-15-55. Acceptance of proof of financial responsibility given by owner for other operators.
63-15-57. Substitution of proof of financial responsibility.
63-15-59. Requirement of new proof of financial responsibility.
63-15-61. Duration of maintenance of proof of financial responsibility; cancellation, return or waiver of proof of financial responsibility.
63-15-63. Transfer of title to vehicle to member of family by person whose license has been suspended or cancelled.
63-15-65. Assigned risk plans.
63-15-67. Surrender of license or registration.
63-15-69. Particular offenses and penalties.
63-15-71. Furnishing by department of abstract relating to person's operating record; fees.
63-15-73. Effect of chapter upon motor vehicle laws.
63-15-75. Effect of chapter upon right of plaintiff to rely upon other legal processes.

§ 63-15-1. Short title.

This chapter may be cited as the "Mississippi Motor Vehicle Safety-Responsibility Law."

HISTORY: Codes, 1942, § 8285-40; Laws, 1952, ch. 359, § 39, eff from and after January 1, 1953.

Cross References — Automobile insurance generally, see §§ 83-11-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Uninsured motorist coverage.

1. In general.

The safety responsibility law does not require that an automobile owner or operator obtain automobile liability insurance in order to drive in Mississippi. State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189 (Miss. 1988), overruling, United States Fidelity & Guaranty Co. v. Stafford, 253 So. 2d 388, 1971 Miss. LEXIS 1218 (Miss. 1971), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988), State Farm Mut. Auto. Ins. Co. v. Moore, 289 So. 2d 909, 1974 Miss. LEXIS 1691 (Miss. 1974), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988) and Vaughn v. State Farm Mut. Auto. Ins. Co., 359 So. 2d 339, 1978 Miss. LEXIS 2258 (Miss. 1978), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988).

The omnibus clause in an automobile liability insurance policy which allows the insured to include others as insureds under the policy merely by granting permission to use the vehicle should be construed in the light of the manifest public policy of this state as indicated by the Motor Vehicle Safety-Responsibility Law and the Uninsured Motor Vehicle Law, both of which clearly indicate the legislative policy of protecting the public and providing insurance coverage where persons are injured on the highways of the state. Travelers Indem. Co. v. Watkins, 209 So. 2d 630, 1968 Miss. LEXIS 1464 (Miss. 1968).

2. Uninsured motorist coverage.

Uninsured motorist coverage is available despite exclusion in policy that insured vehicle cannot be uninsured so as to prevent insured claiming uninsured motorist benefit after being denied recovery based on other policy exclusions, such as household exclusion; uninsured motorist coverage may be stacked. Allstate Ins. Co. v. Randall, 753 F.2d 441, 1985 U.S. App. LEXIS 28113 (5th Cir. Miss. 1985).

Section 83-11-101 does not mandate limits of uninsured motorist coverage equivalent to limits of liability coverage. Johnston v. Safeco Ins. Co., 727 F.2d 548, 1984 U.S. App. LEXIS 24227 (5th Cir. Miss. 1984).

OPINIONS OF THE ATTORNEY GENERAL

A county is authorized under statutes governing general jurisdiction over roads to acquire right-of-way for and construct sidewalks along county roads as part of the county road system utilizing road and bridge funds if the board of supervisors determines, as reflected by an order entered upon its minutes, that such is necessary and convenient for the use of the traveling public. Hollimon, June 4, 2004, A.G. Op. 03-0616.

RESEARCH REFERENCES

ALR.

Liability of insurer under compulsory statutory vehicle liability policy, to injured third persons, notwithstanding insured's failure to comply with policy conditions, as measured by policy limits or by limits of financial responsibility act. 29 A.L.R.2d 817.

Construction and effect of exclusionary clause in automobile liability policy making policy inapplicable while vehicle is used as "public or livery conveyance." 30 A.L.R.2d 273.

Trailers as affecting automobile insurance. 31 A.L.R.2d 298.

Effect of provision of liability policy covering hired automobiles but excluding from definition of "insured" the owner of such vehicle or his employee. 32 A.L.R.2d 572.

Validity of motor vehicle financial responsibility act. 35 A.L.R.2d 1011.

Rescission or avoidance, for fraud or misrepresentation, of compulsory, financial responsibility, or assigned risk automobile insurance. 83 A.L.R.2d 1104.

Policy provision extending coverage to comply with financial responsibility act as applicable to insured's first accident. 8 A.L.R.3d 388.

Share-the-ride arrangement or car pool as affecting status of automobile rider as guest. 10 A.L.R.3d 1087.

Motor scooter as within policy provisions relating to automobiles or motorcycles. 43 A.L.R.3d 1400.

Automobile liability insurance: what are accidents or injuries "arising out of ownership, maintenance, or the use" of insured vehicle. 15 A.L.R.4th 10.

Construction and application of "automatic insurance" or "newly acquired vehicle" clause ("replacement," and "blanket," or "fleet" provisions) contained in automobile liability policy. 39 A.L.R.4th 229.

Construction and application of substitution provision of automobile liability policy. 42 A.L.R.4th 1145.

Automobile insurance coverage for drive-by shootings and other incidents involving the intentional discharge of firearms from moving motor vehicles. 41 A.L.R.5th 91.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 167 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 379-386.

Law Reviews.

1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December, 1979.

Practice References.

Kenworthy, Transportation Safety and Insurance Law, Second Edition (Michie).

Campbell, Fisher, and Mansfield, Defense of Speeding, Reckless Driving and Vehicular Homicide (Matthew Bender).

Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

§ 63-15-3. Definitions.

The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Highway" means the entire width between property lines of any road, street, way, thoroughfare or bridge in the State of Mississippi not privately owned or controlled, when any part thereof is open to the public for vehicular traffic and over which the state has legislative jurisdiction under its police power.

(b) "Judgment" means any judgment which shall have become final by expiration, without appeal, of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(c) "Motor vehicle" means every self-propelled vehicle (other than traction engines, road rollers and graders, tractor cranes, power shovels, well drillers, implements of husbandry, electric bicycles, personal delivery devices and electric personal assistive mobility devices as defined in Section 63-3-103) which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

For purposes of this definition, "implements of husbandry" shall not include trucks, pickup trucks, trailers and semitrailers designed for use with such trucks and pickup trucks.

(d) "License" means any driver's, operator's, commercial operator's, or chauffeur's license, temporary instruction permit or temporary license, or restricted license, issued under the laws of the State of Mississippi pertaining to the licensing of persons to operate motor vehicles.

(e) "Nonresident" means every person who is not a resident of the State of Mississippi.

(f) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of Mississippi pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in the State of Mississippi.

(g) "Operator" means every person who is in actual physical control of a motor vehicle.

(h) "Owner" means a person who holds the legal title of a motor vehicle; in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(i) "Person" means every natural person, firm, copartnership, association or corporation.

(j) "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of Twenty-five Thousand Dollars ($25,000.00) because of bodily injury to or death of one (1) person in any one (1) accident, and subject to said limit for one (1) person, in the amount of Fifty Thousand Dollars ($50,000.00) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of Twenty-five Thousand Dollars ($25,000.00) because of injury to or destruction of property of others in any one (1) accident. Liability insurance required under this paragraph (j) may contain exclusions and limitations on coverage as long as the exclusions and limitations language or form has been filed with and approved by the Commissioner of Insurance.

(k) "Registration" means a certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

(*l*) "Department" means the Department of Public Safety of the State of Mississippi, acting directly or through its authorized officers and agents, except in such sections of this chapter in which some other state department is specifically named.

(m) "State" means any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

HISTORY: Codes, 1942, § 8285-01; Laws, 1952, ch. 359, § 1; Laws, 1972, ch. 349, § 1; Laws, 2003, ch. 485, § 11; Laws, 2005, ch. 483, § 1; Laws, 2015, ch. 315, § 1, eff from and after July 1, 2015; Laws, 2021, ch. 355, § 7, eff from and after July 1, 2021; Laws, 2022, ch. 439, § 7, eff from and after July 1, 2022.

Amendment Notes — The 2021 amendment inserted "electric bicycles" in (c).
The 2022 amendment, in (c), inserted "personal delivery devices," and made a minor stylistic change.

Cross References — Automobile insurance generally, see §§ 83-11-1 et seq.

JUDICIAL DECISIONS

1. In general.

Trial court correctly found there was no genuine issue of material fact that an insured made a false warranty and a misrepresentation as to frequent drivers. However, the trial court incorrectly applied the holding in Lyons v. Direct General, 138 So. 3d 887 (Miss. 2014), to the present case because the legislature amended Miss. Code Ann. § 63-15-3, which overruled Lyons. Safeway Ins. Co. v. Dukes, 185 So. 3d 977, 2015 Miss. LEXIS 585 (Miss. 2015).

It was proper to reverse a summary judgment entered for an insurer in a passenger's suit seeking a declaration that a policy covered the default judgment he obtained against the insured's son because the policy did not comply with minimum-liability coverage requirements; an insurer may not issue an insurance card for use as proof of coverage unless the policy complies with minimum statutory requirements, and if the policy provides no liability coverage for certain drivers, it does not comply. Lyons v. Direct Gen. Ins. Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

Mandatory liability insurance requirement pertains to vehicles, not owners or operators; every vehicle operated within the State must have the statutorily required minimum-coverage requirements of $25,000 for injury to one person, $50,000 for injury to two or more people, and $25,000 for property damage, and a liability policy that purports to exclude that coverage for certain drivers fails to comply with the statutory mandate. Lyons v. Direct Gen. Ins. Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866, 2009 Miss. LEXIS 220 (Miss. 2009).

Defendant was not entitled to relief from the fine imposed for his conviction in violation of Miss. Code Ann. § 63-15-4(4) for failing to have motor vehicle liability insurance at the time of a traffic stop, as there was no evidence in the record that defendant ever presented anyone with proof of insurance. Nunn v. State, 918 So. 2d 79, 2006 Miss. App. LEXIS 21 (Miss. Ct. App. 2006).

At the time of the decedents' accident, there was absolutely no evidence to suggest that the Mississippi Department of Transportation (MDOT) vehicle was in transit or was involved in any mode of transportation, that an MDOT employee was behind the steering wheel, that the vehicle's engine was running, or that an MDOT employee was driving or using the vehicle for any purpose related or incident to transportation; the vehicle was stationary and off the roadway while the bucket was used to attempt to push the tree down and the vehicle's purpose, at the time in question, was to allow the MDOT employees to maneuver the equipment permanently attached, i.e., the lift platform, for purposes unrelated to transportation services; therefore, there was insufficient evidence for the jury to conclude that the accident arose from the use of the MDOT vehicle. Alfa Ins. Corp. v. Ryals, 918 So. 2d 1260, 2005 Miss. LEXIS 442 (Miss. 2005).

Where parents' child was severely and permanently injured after wandering onto a road adjacent to their home, and the father sued the mother for negligence, seeking coverage under a household liability policy, the appellate court, noting general policy concerns and following stare decisis, declined to extend the holding of Glaskox By and Through Denton v. Glaskox and allow a minor child to sue a parent for negligence not involving the operation of a motor vehicle. Pack v. Nationwide Mut. Fire Ins. Co., 878 So. 2d 177, 2004 Miss. App. LEXIS 117 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 981 (Miss. 2004).

Golf cart was not "motor vehicle" within Motor Vehicle Financial Responsibility Act, and thus, exclusion of golf carts definition of "uninsured motor vehicle" in automobile policy did not violate statute. Dowdle v. Mississippi Farm Bureau Mut. Ins. Co., 697 So. 2d 788, 1997 Miss. LEXIS 308 (Miss. 1997).

RESEARCH REFERENCES

ALR.

What constitutes ownership of automobile within meaning of automobile insurance owner's policy. 36 A.L.R.4th 7.

Construction and application of statute imposing liability expressly upon motor vehicle lessor for damage caused by operation of vehicle. 41 A.L.R.4th 993.

State regulation of motor vehicle rental ("you-drive") business. 60 A.L.R.4th 784.

§ 63-15-4. Insurance card; exemptions; card to be kept in vehicle or displayed by electronic image; insurance company to provide; penalty.

(1) The following vehicles are exempted from the requirements of this section:

(a) Motor vehicles exempted by Section 63-15-5;

(b) Motor vehicles for which a bond or a certificate of deposit of money or securities in at least the minimum amounts required for proof of financial responsibility is on file with the department;

(c) Motor vehicles that are self-insured under Section 63-15-53; and

(d) Implements of husbandry.

(2)(a) Every motor vehicle operated in this state shall have a motor vehicle liability insurance policy that covers the vehicle and is in compliance with the liability limits required by Section 63-15-3(j). The insured parties shall be responsible for maintaining the insurance on each motor vehicle.

(b) An insurance company issuing a policy of motor vehicle liability insurance as required by this section shall furnish to the insured an insurance card for each motor vehicle at the time the insurance policy becomes effective. The insurance card may be furnished in either paper or electronic format as chosen by the insured. Acceptable electronic formats include display of electronic images on a cellular phone or any other type of electronic device. Beginning on July 1, 2013, insurers shall furnish commercial auto coverage customers with an insurance card clearly marked with the identifier, "Commercial Auto Insurance" or "Fleet" or similar language, to reflect that the vehicle is insured under a commercial auto policy.

(3) Upon stopping a motor vehicle at a roadblock where all passing motorists are checked as a method to enforce traffic laws or upon stopping a motor vehicle for any other statutory violation, a law enforcement officer, who is authorized to issue traffic citations, shall verify that the insurance card required by this section is in the motor vehicle or is displayed by electronic image on a cellular phone or other type of electronic device. However, no driver shall be stopped or detained solely for the purpose of verifying that the motor vehicle is covered by liability insurance in the amounts required under Section 63-15-3(j) unless the stop is part of such roadblock. If the law enforcement officer uses the verification system created in Section 63-16-3 and receives a response from the system verifying that the owner of the motor vehicle has liability insurance in the amounts required under Section 63-15-3(j), then the officer shall not issue a citation under this section notwithstanding any failure to display an insurance card by the owner or operator.

(4) Failure of the owner or the operator of a motor vehicle to have the insurance card in the motor vehicle, or to display the insurance card by electronic image on a cellular phone or other type of electronic device, is a misdemeanor and, upon conviction, is punishable by a fine of One Hundred Dollars ($100.00) and suspension of driving privilege for a period of one (1) year or until the owner of the motor vehicle shows proof of liability insurance that is in compliance with the liability limits required by Section 63-15-3(j) and has paid the fines and assessments imposed and the driver's license reinstatement fees imposed by the Department of Public Safety. A judge shall determine whether the defendant is indigent, and if a determination of indigence is made, shall authorize the reinstatement of that person's driver's license upon proof of mandatory liability insurance subject to compliance with a payment plan for any fines, assessments and/or fees. Fraudulent use of an insurance card shall be punishable in accordance with Section 97-7-10. If such fines are levied in a municipal court, the funds from such fines shall be deposited in the general fund of the municipality. If such fines are levied in any of the courts of the county, the funds from such fines shall be deposited in the general fund of the

county. A person convicted of a criminal offense under this subsection (4) shall not be convicted of a criminal offense under Section 63-16-13(1) arising from the same incident.

(5) If, at the hearing date or the date of payment of the fine the owner shows proof that such insurance was in effect at the time of citation, the case shall be dismissed as to the defendant with prejudice and all court costs shall be waived against the defendant.

(6) No law enforcement officer may access any function, feature or other electronic image on a person's cellular phone or other type of electronic device when enforcing the provisions of this section except for the electronic image of an insurance card shown to the officer.

HISTORY: Laws, 2000, ch. 302, § 1; Laws, 2005, ch. 483, § 5; Laws, 2005, ch. 498, § 1; Laws, 2008, ch. 487, § 1; Laws, 2012, ch. 504, § 8; Laws, 2013, ch. 475, § 1; Laws, 2015, ch. 421, § 1; brought forward without change, Laws, 2017, ch. 303, § 8, eff from and after July 1, 2017; Laws, 2018, ch. 454, § 1, eff from and after passage (approved April 13, 2018).

Joint Legislative Committee Note — Section 5 of ch. 483 Laws of 2005, effective from and after July 1, 2005 (approved April 4, 2005), amended this section. Section 1 of ch. 498, Laws of 2005, effective from and after July 1, 2005 (approved April 21, 2005), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 498, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference near the end of (4) by deleting "of this act" following "Section 63-16-13(1)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Notes — Laws of 2000, ch. 302, § 2, provides:

"SECTION 2. This act shall take effect and be in force from and after January 1, 2001."

Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Responsibility for providing insurance.
3. Fines.

1. In general.

Town provided defendant with charging instruments because the two traffic tickets a police officer issued to defendant met the requirements established by Miss.

Code Ann. § 63-9-21(3)(c) and complied with Miss. Unif. Cir. & Cty. R. 7.06; in addition, the town supplemented its discovery disclosures and explicitly informed defendant that he was charged with operating a motor vehicle without a valid driver's license and failing to maintain or provide proof of insurance. Caissie v. State, 254 So. 3d 849, 2018 Miss. App. LEXIS 110 (Miss. Ct. App. 2018), cert. denied, 254 So. 3d 170, 2018 Miss. LEXIS 410 (Miss. 2018), cert. denied, — U.S. —, 140 S. Ct. 100, 205 L. Ed. 2d 36, 2019 U.S. LEXIS 4809 (U.S. 2019).

Legislature possesses the sole power to authorize exclusions, and automobile insurers are not free to escape the statutorily required minimum-liability coverage simply by inserting an exclusion of their choice, no matter how well-reasoned, into their policies; arguments for exceptions to clear statutory requirements should be made to the Legislature, not the supreme court. Lyons v. Direct Gen. Ins. Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

Mandatory liability insurance requirement pertains to vehicles, not owners or operators; every vehicle operated within the State must have the statutorily required minimum-coverage requirements of $25,000 for injury to one person, $50,000 for injury to two or more people, and $25,000 for property damage, and a liability policy that purports to exclude that coverage for certain drivers fails to comply with the statutory mandate. Lyons v. Direct Gen. Ins. Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

It was proper to reverse a summary judgment entered for an insurer in a passenger's suit seeking a declaration that a policy covered the default judgment he obtained against the insured's son because the policy did not comply with minimum-liability coverage requirements; an insurer may not issue an insurance card for use as proof of coverage unless the policy complies with minimum statutory requirements, and if the policy provides no liability coverage for certain drivers, it does not comply. Lyons v. Direct Gen. Ins. Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

Miss. Const. Art. 3, § 23, was not violated by detaining defendant briefly after a traffic stop; once he stopped defendant's vehicle, the deputy was required to ensure that defendant's temporary license plate was valid and that defendant had liability insurance, pursuant to Miss. Code Ann. § 63-15-4(3). Wade v. State, 33 So. 3d 498, 2009 Miss. App. LEXIS 645 (Miss. Ct. App. 2009).

2. Responsibility for providing insurance.

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866, 2009 Miss. LEXIS 220 (Miss. 2009).

Insurer for a rental car company was primary insurer on rental car that was involved in an accident and was not relieved of its obligation to provide insurance simply because the renter also had liability insurance, as Miss. Code Ann. § 63-15-4(2) placed the responsibility of maintaining insurance on the party that had an insurable interest in the property, which in this case was the rental car company. Universal Underwriters Group, Inc. v. State Farm Fire & Cas. Co., 931 So. 2d 617, 2005 Miss. App. LEXIS 974 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 324 (Miss. 2006).

3. Fines.

Defendant's conviction in violation of Miss. Code Ann. § 63-15-4(4) for failing to have motor vehicle liability insurance at the time of a traffic stop, the $1,000 fine, and the suspension of his driver's license, were all affirmed as there was no evidence in the record that defendant ever presented anyone with proof of insurance. Nunn v. State, 918 So. 2d 79, 2006 Miss. App. LEXIS 21 (Miss. Ct. App. 2006).

OPINIONS OF THE ATTORNEY GENERAL

A violation of the statute occurs only when both the owner and operator fail to have proof of insurance; therefore, there is no violation if the operator has proof of insurance that covers his operation of the vehicle but the owner does not, or if the owner of the motor vehicle has proof of insurance in the vehicle but the operator does not. Lawrence, Feb. 9, 2001, A.G. Op. #2001-0052.

A municipal judge has the authority to suspend any portion of the fine imposed under the statute. Lawrence, Feb. 9, 2001, A.G. Op. #2001-0052.

A municipal court judge has the authority to sentence a defendant convicted of violating the statute to public service in lieu of part or all of the fine imposed. Lawrence, Feb. 9, 2001, A.G. Op. #2001-0052.

The Commissioner of Public Safety is responsible for suspending the driving privilege of an individual convicted of violating the statute. Ringer, Mar. 9, 2001, A.G. Op. #01-0117.

If a defendant, who was ticketed for violation of the statute, shows proof that his liability insurance was in effect on the date of the citation, the ticket should be dismissed. Fountain, Apr. 13, 2001, A.G. Op. #01-0217.

If a defendant was ticketed for a violation of the statute and later obtained liability insurance as required by law, the violator should be fined $ 100.00; however, that fine, or a portion thereof, may be suspended by the judge. Fountain, Apr. 13, 2001, A.G. Op. #01-0217.

Evidence of insurance coverage must be presented on the hearing date, or the date of payment of the fine, in order to have the fine reduced or waived. Markopoulos, Oct. 29, 2004, A.G. Op. 04-0513.

If the requirements of subsection (5) of this section are met, the fine for not showing proof of liability insurance at the time of a traffic stop shall be reduced to one hundred dollars or waived, whichever is appropriate under the statute, either on the hearing date or on the date of payment of the fine. Miller, Aug. 27, 2004, A.G. Op. 04-0432 is withdrawn. Dawson, Dec. 17, 2004, A.G. Op. 04-0578.

The "hearing date" in this section is the date on which the charge was heard by the court. The "date of payment of the fine" is the date the court, at sentencing, ordered the fine to be paid. Thus, if the owner, on either date, shows proof that he purchased liability insurance subsequent to receiving the citation the fine should be reduced to $100.00; if he, on either date, shows proof that the insurance was in effect at the time he received the citation the fine and court costs should be waived. Lawrence, Apr. 8, 2005, A.G. Op. 05-0053.

In order to have a fine reduced or waived under the terms of Section 63-15-4(5), proof of coverage must have been produced at the hearing date or the date the court ordered the fine to be paid in its sentence. Therefore, a judge has no authority to alter or reduce a fine where a defendant furnished proof that coverage was obtained after he was tried, found guilty and sentenced. Darby, May 10, 2005, A.G. Op. 05-0078.

§ 63-15-5. Applicability of chapter to government owned vehicles.

This chapter shall not apply with respect to any motor vehicle owned by the United States, the State of Mississippi or any political subdivision of this state. Nothing in this chapter shall be construed so as to exclude from this chapter its applicability to taxicabs, jitneys or other vehicles for hire operating under franchise or permit of any incorporated city, town or village.

HISTORY: Codes, 1942, § 8285-33; Laws, 1952, ch. 359, § 32, eff from and after January 1, 1953.

Cross References — Prohibition against issuance of municipal certificate or permit for motor vehicle for hire until liability insurance or bond is filed and approved, see § 21-27-133.

Automobile insurance generally, see §§ 83-11-1 et seq.

JUDICIAL DECISIONS

1. In general.

Section 83-11-103(c)(iv), which defines uninsured motor vehicle to include vehicle to which there is no bond or deposit of cash or securities or other compliance with financial responsibility law (§ 63-15-5), does not apply to municipal vehicle; "bond or deposit of cash" referred to in statute must be more than reserve of funds set aside such as bank account or monies placed with Mississippi Municipal Liability Plan, but must actually comply with financial responsibility law. Coleman v. American Mfrs. Mut. Ins. Co., 930 F. Supp. 255, 1996 U.S. Dist. LEXIS 8961 (N.D. Miss. 1996).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of exclusion of government vehicles from uninsured-motorist provision. 58 A.L.R.5th 511.

§ 63-15-7. Administration of chapter; judicial review of orders and acts of department.

(1) The department shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration, but may not require fees from insurance companies, and shall provide for hearings upon request of persons aggrieved by orders or acts of the department under the provisions of this chapter.

(2) Any order or act of the department, under the provisions of this chapter, may be subject to review within ten days after notice thereof, by appeal to the county court at the instance of any party in interest and in the county wherein the person aggrieved by such order or act resides, or if there be no county court therein, then such jurisdiction shall be in the circuit court of said county, and such court is hereby vested with jurisdiction. The court shall determine whether the filing of the appeal shall operate as a stay of any such order or decision of the department. The court may, in disposing of the issue before it, modify, affirm, or reverse the order or decision of the department in whole or in part.

(3) Trial in the court shall be de novo, with the burden of proof upon the department. The same shall be tried without regard to any prior holding of fact or law by the department, and judgment entered only upon the evidence offered at the trial by the court. A trial by jury may be had under the rules of the court.

HISTORY: Codes, 1942, § 8285-02; Laws, 1952, ch. 359, § 2; Laws, 2016, ch. 410, § 4, eff from and after Jan. 1, 2017.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Administrative hearing.
3. Appeal.
4. —Admissibility of evidence.

1. In general.
Where an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act. Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So. 2d 446, 1958 Miss. LEXIS 288 (Miss. 1958).

2. Administrative hearing.
A hearing before the safety-responsibility bureau to suspend the driver's license and registration of the automobile of an owner, who had been involved in a public highway accident resulting in property damages in excess of $50, and who was not covered in any manner under the Motor Vehicle Safety-Responsibility Law, was purely an administrative matter. Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So. 2d 446, 1958 Miss. LEXIS 288 (Miss. 1958).

3. Appeal.
On an appeal from the action of the safety-responsibility bureau revoking the driver's license and automobile registration of an owner who had been involved in a highway accident resulting in property damages in excess of $50, and he was not covered in any manner under the Motor Vehicle Safety-Responsibility Law, the automobile owner was not entitled to a trial de novo in the circuit court, and it was not incumbent upon the department to prove that the owner was guilty of negligence. Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So. 2d 446, 1958 Miss. LEXIS 288 (Miss. 1958).

4. —Admissibility of evidence.
The safety-responsibility bureau's records of its action in revoking the license and automobile registration of an owner who had been involved in a highway accident resulting in property damages in excess of $50, and who was not covered in any manner under the Motor Vehicle Safety-Responsibility Law, was properly admitted on an appeal from the department's action to the circuit court. Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So. 2d 446, 1958 Miss. LEXIS 288 (Miss. 1958).

On an appeal from the action of the safety-responsibility bureau revoking the driver's license and automobile registration of an owner who had been involved in a highway accident resulting in property damages in excess of $50, and who was not covered in any manner under the Motor Vehicle Safety-Responsibility Law, the automobile owner was not entitled to introduce evidence to show that he was not guilty of negligence in connection with the accident. Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So. 2d 446, 1958 Miss. LEXIS 288 (Miss. 1958).

§ 63-15-9. Repealed.

Repealed by Laws, 2003, ch. 485, § 2, eff from and after July 1, 2003.

§ 63-15-9. [Codes, 1942, § 8295-04; Laws, 1952, ch. 359, § 4; Laws, 1970, ch. 486, § 1; Laws, 1980, ch 488, § 2; Laws, 1984, ch. 366, eff from and after passage (approved April 16, 1984).]

Editor's Notes — Former § 63-15-9 required operators of motor vehicles to file accident reports when involved in an accident.

§§ 63-15-11 through 63-15-21. Repealed.

Repealed by Laws of 2013, ch. 389, §§ 1 through 6, effective upon passage (approved March 20, 2013.)

§ 63-15-11. [Codes, 1942, § 8285-05; Laws, 1952, ch. 359, § 5; Laws, 1960, ch. 411, § 1; Laws, 1970, ch. 487, § 1; Laws, 1972, ch. 349, § 2; Laws, 1980, ch. 488, § 1; Laws, 2005, ch. 483, § 2, eff from and after Jan. 1, 2006.]

§ 63-15-13. [Codes, 1942, § 8285-06; Laws, 1952, ch. 359, § 6; Laws, 1960, ch. 411, § 2; Laws, 1970, ch. 485, § 1, eff from and after passage (approved April 3, 1970).]

§ 63-15-15. [Codes, 1942, § 8285-07; Laws, 1952, ch. 359, § 7; Laws, 1960, ch. 411, § 3, eff July 1, 1960.]

§ 63-15-17. [Codes, 1942, § 8285-08; Laws, 1952, ch. 359, § 8, eff from and after January 1, 1953.]

§ 63-15-19. [Codes, 1942, § 8285-09; Laws, 1952, ch. 359, § 9, eff from and after January 1, 1953.]

§ 63-15-21. [Codes, 1942, § 8285-10; Laws, 1952, ch. 359, § 10; Laws, 1960, ch. 411, § 4, eff July 1, 1960.]

Editor's Notes — Former § 63-15-11 required a deposit of security for damages resulting from a motor vehicle accident.

Former § 63-15-13 provided exemptions from the security requirement of former § 63-15-11.

Former § 63-15-15 provided for the duration of the suspension of license and registration and nonresident's operating privilege for failure to deposit security under the Motor Vehicle Safety-Responsibility Act.

Former § 63-15-17 provided for the application of security requirements to nonresidents, unlicensed drivers and accidents in other states.

Former § 63-15-19 provided for the form and amount of security required to be deposited under the Motor Vehicle Safety-Responsibility Act.

Former § 63-15-21 provided for the custody, disposition and return of security under the Motor Vehicle Safety-Responsibility Act.

§ 63-15-23. Admissibility in evidence in civil actions of reports, etc. of department.

Neither the report required by Section 63-15-9, the action taken by the department pursuant to this chapter, the findings, if any, of the department upon which such action is based, nor the security filed as provided in this chapter shall be referred to in any way, or be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. However, the report required by Section 63-15-9 may be referred to in proving uninsured status of the owner and the operator of a vehicle in any action to enforce a claim under the uninsured motorist provisions of an automobile liability policy, but only as provided in Section 13-1-124.

HISTORY: Codes, 1942, § 8285-11; Laws, 1952, ch. 359, § 11; Laws, 1981, ch. 361, § 3, eff from and after July 1, 1981.

Editor's Notes — Section 13-1-124, referred to in this section, was repealed by Laws of 1991, ch. 573, § 141, effective from and after July 1, 1991.

Section 63-15-9, referred to in this section, was repealed by Laws of 2003, ch. 485, § 2, effective from and after July 1, 2003.

Cross References — For similar provision regarding use of accident report to the department of motor vehicles as evidence of uninsured status, see § 63-3-417.

Action against owner or operator of an uninsured motor vehicle, see § 83-11-105.

JUDICIAL DECISIONS

1. In general.

Statement in testimony of police officer who had investigated automobile-truck collision, that he had not given any special instructions to anyone at the accident scene except how to take care of a citation, was not so prejudicial to defendant truck-driver and his employer as to require a new trial, where the lower court sustained defendants' objections and instructed jury to disregard statement, the statement did not specify that citation was issued to defendant truckdriver, defendants did not move for a mistrial, and lower court granted a directed verdict on liability. South Cent. Bell Tel. Co. v. Parker, 491 So. 2d 212, 1986 Miss. LEXIS 2498 (Miss. 1986).

If defendants, in an action arising out of a truck-automobile collision, believed that testimony of the investigating police officer, containing a reference to a citation, was so prejudicial that it could not be cured by court's instructing jury to disregard it, then defendants should have requested a mistrial. South Cent. Bell Tel. Co. v. Parker, 491 So. 2d 212, 1986 Miss. LEXIS 2498 (Miss. 1986).

§ 63-15-25. Certification to department of unsatisfied judgment; reports of convictions, pleas or actions in judicial proceedings for violations of motor vehicle laws.

(1) Whenever any person fails within sixty days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the department immediately after the expiration of said sixty days, a certified copy of such judgment.

(2) If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses of the state of which the defendant is a resident.

(3) The clerk of the court, or the judge of a court which has no clerk, in which any conviction for violation of a motor vehicle law is rendered, or in which a person charged with violation of a motor vehicle law has pleaded guilty or forfeited bail, shall forward immediately to the department a certified a copy of the judgment, order or record of other action of the court. This copy shall be prima-facie evidence of the conviction, plea or other action stated.

HISTORY: Codes, 1942, § 8285-12; Laws, 1952, ch. 359, § 12, eff from and after January 1, 1953.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 71.

§ 63-15-27. Suspension of license, registration or operating privilege for nonpayment of judgment generally.

(1) Upon the receipt of a certified copy of a judgment, the department shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in Section 63-15-33.

(2) If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed license or nonresident's operating privilege, the same may be allowed by the department, in its discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in Section 63-15-33, provided the judgment debtor furnishes proof of financial responsibility.

HISTORY: Codes, 1942, § 8285-13; Laws, 1952, ch. 359, § 13, eff from and after January 1, 1953.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 171.

CJS.
60 C.J.S., Motor Vehicles §§ 387-390.

§ 63-15-29. Duration of suspension; effect of discharge in bankruptcy.

(1) Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in Sections 63-15-27 and 63-15-33.

(2) A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this chapter.

HISTORY: Codes, 1942, § 8285-14; Laws, 1952, ch. 359, § 14, eff from and after January 1, 1953.

JUDICIAL DECISIONS

1. In general.

A state motor vehicle safety responsibility statute providing that an unsatisfied automobile accident judgment is a ground for suspension of the judgment debtor's license and registration, even if the debtor has received a discharge in bankruptcy after the rendering of the judgment, has both the effect and the purpose of frustrating federal law under the Bankruptcy Act (11 USCS §§ 1 et seq.) and is therefore invalid under the supremacy clause of the Constitution. Perez v. Campbell, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233, 1971 U.S. LEXIS 127 (U.S. 1971), limited, In re Johnson, 28 B.R. 406, 1982 Bankr. LEXIS 4657 (Bankr. W.D. Pa. 1982).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 171.

CJS.

60 C.J.S., Motor Vehicles §§ 387-390.

§ 63-15-31. Amounts required for satisfaction of judgment.

Judgments referred to in this chapter shall, for the purpose of this chapter only, be deemed satisfied:

(a) When Twenty-five Thousand Dollars ($25,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one (1) person as the result of any one (1) accident; or

(b) When, subject to such limit of Twenty-five Thousand Dollars ($25,000.00) because of bodily injury to or death of one (1) person, the sum of Fifty Thousand Dollars ($50,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two (2) or more persons as the result of any one (1) accident; or

(c) When Twenty-five Thousand Dollars ($25,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one (1) accident.

However, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

HISTORY: Codes, 1942, § 8285-15; Laws, 1952, ch. 359, § 15; Laws, 1972, ch. 349, § 3; Laws, 2005, ch. 483, § 3, eff from and after Jan. 1, 2006.

§ 63-15-33. Allowance and effect of payment of judgment in installments; default.

(1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a license or a nonresident's operating privilege, and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter.

HISTORY: Codes, 1942, § 8285-16; Laws, 1952, ch. 359, § 16, eff from and after January 1, 1953.

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 73-77.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic, §§ 33:76, 33:77.

§ 63-15-35. Requirement of proof of financial responsibility upon conviction, etc., of offense requiring suspension or revocation of license.

(1) Whenever the department, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail, the department shall also suspend the registration for all motor vehicles licensed in the name of such person. However the department shall not suspend such license, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles licensed by such person.

(2) Such license or licenses, as the case may be, shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(3) If a person is not licensed, but by final order of judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating a motor vehicle upon the highways without being licensed to do so, no license shall thereafter be issued to such person until he shall give and thereafter maintain proof of financial responsibility.

(4) Whenever the department suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously

given or shall immediately give and thereafter maintain proof of financial responsibility.

HISTORY: Codes, 1942, § 8285-17; Laws, 1952, ch. 359, § 17, eff from and after January 1, 1953.

RESEARCH REFERENCES

CJS.
60 C.J.S., Motor Vehicles §§ 379-386.

§ 63-15-37. Methods of giving proof of financial responsibility generally.

Proof of financial responsibility when required under this chapter with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

1. a certificate of insurance as provided in Section 63-15-39 or Section 63-15-41; or
2. a bond as provided in Section 63-15-49; or
3. a certificate of deposit of money or securities as provided in Section 63-15-51; or
4. a certificate of self-insurance as provided in section 63-15-53, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

HISTORY: Codes, 1942, § 8285-18; Laws, 1952, ch. 359, § 18, eff from and after January 1, 1953.

JUDICIAL DECISIONS

1. In general.

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866, 2009 Miss. LEXIS 220 (Miss. 2009).

Certificate of self-insurance is not commercial insurance policy subject to provisions of Uninsured Motorist Act. McCoy v. South Cent. Bell Tel. Co., 688 So. 2d 214, 1996 Miss. LEXIS 634 (Miss. 1996).

RESEARCH REFERENCES

Law Reviews.

Insurance: Enforceability of Automobile Business Exclusion to Automobile Liability Coverage. 53 Miss. L. J. 205, March, 1983.

§ 63-15-39. Certificate of insurance as proof of financial responsibility; residents.

Proof of financial responsibility may be furnished by filing with the department the written certificate of any insurance company duly authorized to write motor vehicle liability insurance in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

HISTORY: Codes, 1942, § 8285-19; Laws, 1952, ch. 359, § 19, eff from and after January 1, 1953.

Cross References — Automobile insurance generally, see §§ 83-11-1 et seq.

JUDICIAL DECISIONS

1. In general.

The court of appeals erred by applying the requirements of Miss. Code Ann. § 63-15-43 (Rev. 2013) because it applied only to policies certified under Miss. Code Ann. §§ 63-15-39 and 63-15-41 (Rev. 2013), and neither party suggested that the liability policy was one certified under §§ 63-15-39 and 63-15-41 Lyons v. Direct Gen. Ins. Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

Insurers participating in the automobile assigned risk plan are under no duty to investigate and screen out potentially dangerous drivers. Ervin v. United States Fidelity & Guaranty Co., 365 So. 2d 1208, 1978 Miss. LEXIS 2436 (Miss. 1978).

RESEARCH REFERENCES

Am. Jur.

7 Am. Jur. 2d, Automobile Insurance §§ 32-37.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 72.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic § 33:65.

34 Am. Jur. Proof of Facts 2d 585, Use of Motor Vehicle by Person Claiming Insurance Coverage.

Law Reviews.

Insurance: Enforceability of Automobile Business Exclusion to Automobile Liability Coverage. 53 Miss. L. J. 205, March, 1983.

§ 63-15-41. Certificate of insurance as proof of financial responsibility; nonresidents.

(1) The nonresident owner of a motor vehicle, the owner or operator of which is not licensed in this state, may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance company authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate or certificates are registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise con-

forms to the provisions of this chapter. The department shall accept the same upon condition that said insurance company complies with the following provisions with respect to the policies so certified:

(a) Said insurance company shall execute a power of attorney authorizing the department to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state;

(b) Said insurance company shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

(2) If any insurance company not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the department shall not thereafter accept as proof any certificate of said company whether theretofore filed or thereafter tendered as proof, so long as such default continues.

HISTORY: Codes, 1942, § 8285-20; Laws, 1952, ch. 359, § 20, eff from and after January 1, 1953.

JUDICIAL DECISIONS

1. In general.

The court of appeals erred by applying the requirements of Miss. Code Ann. § 63-15-43 (Rev. 2013) because it applied only to policies certified under Miss. Code Ann. §§ 63-15-39 and 63-15-41 (Rev. 2013), and neither party suggested that the liability policy was one certified under §§ 63-15-39 and 63-15-41 Lyons v. Direct Gen. Ins. Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

RESEARCH REFERENCES

Am. Jur.

7 Am. Jur. 2d, Automobile Insurance §§ 32-37.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 72.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic § 33:65.

§ 63-15-43. Motor vehicle liability policy; definition; required provisions.

(1) A “motor vehicle liability policy” as said term is used in this chapter shall mean an owner’s or an operator’s motor vehicle liability policy, that has been certified as provided in Section 63-15-39 or Section 63-15-41, as proof of financial responsibility, and issued, except as otherwise provided in Section 63-15-41, by an insurance company duly authorized to write motor vehicle liability insurance in this state, to or for the benefit of the person named therein as insured.

(2) Such owner’s motor vehicle liability policy:

(a) May be any motor vehicle liability policy form that has been filed with and approved by the Commissioner of Insurance and may contain exclusions and limitations on coverage as long as the exclusions and limitations language has been filed with and approved by the Commissioner of Insurance.

(b) Shall have limits of liability no less than: Twenty-five Thousand Dollars ($25,000.00) because of bodily injury to or death of one (1) person in any one (1) accident and, subject to said limit for one (1) person, Fifty Thousand Dollars ($50,000.00) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and Twenty-five Thousand Dollars ($25,000.00) because of injury to or destruction of property of others in any one (1) accident.

(3) Every motor vehicle liability policy certified under the provisions of this chapter shall be subject to the following provisions which need not be contained therein:

(a) The liability of the insurance company with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance company and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance company to make payment on account of such injury or damage;

(c) The insurance company shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in paragraph (b) of subsection (2) of this section; or

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the chapter shall constitute the entire contract between the parties.

(4) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage, the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(5) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance company for any payment the insurance company would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(6) Any motor vehicle liability policy may provide for the prorating of the insurance there under with other valid and collectible insurance.

(7) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance companies which policies together meet such requirements.

(8) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

HISTORY: Codes, 1942, § 8285-21; Laws, 1952, ch. 359, § 21; Laws, 1972, ch. 349, § 4; Laws, 2005, ch. 483, § 4; Laws, 2016, ch. 328, § 21; Laws, 2016, ch. 410, § 2, eff from and after Jan. 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two typographical errors in the version effective until January 1, 2017, in (2)(a) by substituting "coverage is granted" for "coverage granted" and in (6)(d) by substituting "application for the policy" for "application the policy." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Section 21 of ch. 328, Laws of 2016, effective July 1, 2016 (approved April 4, 2016), amended this section. Section 2 of ch. 410, Laws of 2016, effective January 1, 2017 (approved April 11, 2016), also amended this section. The amendments to this section do not conform and do not meet the Joint Legislative Committee on Compilation, Revision and Publication of Legislation's criteria for integration. As set out above, this section reflects the language of Section 21 of ch. 328, Laws of 2016, effective until January 1, 2017, and Section 2 of ch. 410, Laws of 2016, effective January 1, 2017, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Cross References — Automobile insurance generally, see §§ 83-11-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Liability coverage.
4. —Omnibus clause.
5. Uninsured motorists coverage.
6. Miscellaneous.
7. Exemptions.
8. Waiver.

1. In general.

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866, 2009 Miss. LEXIS 220 (Miss. 2009).

Mississippi's Uninsured Motorist Act (UM Act) was designed to fill three gaps in coverage that were left after enactment of Mississippi's Safety Responsibility Act: negligent drivers would often fail to purchase liability insurance mandated by law; denial of coverage on basis of uninsured motorist exclusions or policy breaches; and tortfeasor sometimes happened to be hit-and-run driver. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248, 1997 U.S. App. LEXIS 22634 (5th Cir. Miss. 1997).

It is the law in Mississippi, as in most jurisdictions, that if there is any difference between an insurance policy as written by the company and the statutory requirements of the state, the requirements of the statute are incorporated into and become a part of the policy. Wolf v. State, 281 So. 2d 445, 1973 Miss. LEXIS 1497 (Miss. 1973).

2. Applicability.

Court of appeals erred by applying the requirements of Miss. Code Ann. § 63-15-43 (Rev. 2013) because it applied only to policies certified under Miss. Code Ann. §§ 63-15-39 and 63-15-41 (Rev. 2013), and neither party suggested that the liability policy was one certified under §§ 63-15-39 and 63-15-41. Lyons v. Direct Gen. Ins.

Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

Court of appeals erred by applying the requirements of the statute because it applied only to policies certified under Miss. Code Ann. §§ 63-15-39 and 63-15-41, and neither party suggested that the liability policy was one certified under §§ 63-15-39 and 63-15-41. Lyons v. Direct Gen. Ins. Co., 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

The provisions of Miss Code Ann. § 63-15-43 do not apply to all policies of liability insurance issued within the State of Mississippi, but only to those policies that were certified as proof of financial responsibility; where there was no evidence that the auto dealer had to get a policy certified as proof of financial responsibility and where the action was a declaratory action between insurers and not against the auto dealer, the dealer's compliance or noncompliance with the Mississippi Motor Vehicle Safety-Responsibility Law was of no moment. State Farm Mut. Auto. Ins. Co. v. Universal Underwriters Ins. Co., 797 So. 2d 981, 2001 Miss. LEXIS 265 (Miss. 2001).

"Limits", as used in Mississippi Uninsured Motorist Act (UM Act) section which provides that Act incorporates limits set forth in Mississippi's Safety Responsibility Act, refers to territorial and monetary limitations in the Safety Responsibility Act. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248, 1997 U.S. App. LEXIS 22634 (5th Cir. Miss. 1997).

Certificate of self-insurance is not commercial insurance policy subject to provisions of Uninsured Motorist Act. McCoy v. South Cent. Bell Tel. Co., 688 So. 2d 214, 1996 Miss. LEXIS 634 (Miss. 1996).

The provisions of § 63-15-43 do not apply to all policies of liability insurance issued within the State of Mississippi, but apply only to those policies which have been certified as proof of financial responsibility. State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189 (Miss. 1988), overruling, United States Fidelity & United States Fidelity & Guaranty Co. v. Stafford, 253 So. 2d 388, 1971 Miss. LEXIS 1218 (Miss. 1971), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988), State Farm Mut. Auto. Ins. Co. v. Moore, 289 So. 2d 909, 1974 Miss. LEXIS 1691 (Miss. 1974), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988) and Vaughn v. State Farm Mut. Auto. Ins. Co., 359 So. 2d 339, 1978 Miss. LEXIS 2258 (Miss. 1978), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988).

3. Liability coverage.

An automobile insurance policy exclusion specifying that the policy would not provide liability coverage for "injury to or destruction of property. . .rented to or in charge of the insured. . ." applied where the insured's sister accidentally collided with a company car which had been placed in the care and supervision of the insured by her employer to facilitate the carrying out of her corporate responsibilities, even though the car was parked in the insured's garage and was unoccupied at the time of the collision. Steadman v. Mississippi Farm Bureau Casualty Ins. Co., 626 So. 2d 588, 1993 Miss. LEXIS 310 (Miss. 1993).

Since the aim of the "in charge of" exclusion mandated by § 63-15-43(5)(c) is to protect the affordability of automobile liability insurance by restricting its coverage to property not owned or under the dominion of the insured, the policy behind the statute would be defeated if the definition of "in charge of" were restricted to the act of driving a vehicle; if "in charge of" were restricted to driving, there would still be numerous and frequent occasions where the very thing sought to be prevented by § 63-15-43 would occur-insureds collecting for damage to property over which they exercised dominion. Steadman v. Mississippi Farm Bureau Casualty Ins. Co., 626 So. 2d 588, 1993 Miss. LEXIS 310 (Miss. 1993).

A 13-year-old daughter was a member of her divorced mother's household, and was therefore excluded from coverage under her mother's automobile liability insurance policy which provided no liability coverage for injuries sustained by a family member, even though the daughter was planning to live with her father and the mother and daughter were driving to the father's home when the accident occurred, where the daughter had lived with her mother and had been under her mother's legal custody, management and control since her parents' divorce 12 years earlier, there had been no application to a court to change such legal custody and control, the daughter was with her mother in her mother's automobile when the accident occurred, they had not reached the father's residence at the time of the accident, the daughter's belongings were in her mother's automobile and had not yet been transferred to her father's residence, and the daughter had not yet seen or been in contact with her father and was not under his management and control at the time of the accident. Thompson v. Mississippi Farm Bureau Mut. Ins. Co., 602 So. 2d 855, 1992 Miss. LEXIS 392 (Miss. 1992).

This statute does not guarantee that all persons who drive motor vehicles in the state are to be covered for the minimum amount of insurance specified in subsection (2)(b); in particular, under subsection 5(b), it is possible to exclude coverage of employees, regardless of whether the employee is eligible for workmen's compensation benefits. Preferred Risk Mut. Ins. Co. v. Poole, 411 F. Supp. 429, 1976 U.S. Dist. LEXIS 16167 (N.D. Miss.), aff'd, 539 F.2d 574, 1976 U.S. App. LEXIS 6975 (5th Cir. Miss. 1976).

An insurance company may not validly offset payments made pursuant to uninsured motorist coverage against payments due under the bodily injury liability provision of the same policy, and a policy clause permitting such offset was void as against public policy. Missouri General Ins. Co. v. Youngblood, 515 F.2d 1254, 1975 U.S. App. LEXIS 13672 (5th Cir. Miss. 1975).

4. —Omnibus clause.

Named driver exclusion endorsement excluding coverage for a driver was invalid as: (1) it conflicted with Miss. Code Ann. § 63-15-43(2)(b), which required policy coverage for all permissive drivers; (2) an insured could not exclude from coverage a member of her household or anyone else who drove a covered vehicle with the permission of the insured, at least up to the statutorily required minimum coverage. (3) the driver was permitted to operate his mother's car and caused injury to a third party; and (4) a family-member-exclusion was not at issue. Lyons v. Direct Gen. Ins. Co., 138 So. 3d 930, 2012 Miss. App. LEXIS 793 (Miss. Ct. App. 2012), aff'd, 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

Miss. Code Ann. § 63-15-43(2)(b) requires policy coverage for all permissive drivers, and an insured cannot exclude from coverage a member of her household or anyone else who drives a covered vehicle with the permission of the insured, at least up to the statutorily required minimum coverage; named-driver exclusions cannot defeat mandatory liability coverage for persons operating a covered vehicle with the permission of the insured, Lyons v. Direct Gen. Ins. Co., 138 So. 3d 930, 2012 Miss. App. LEXIS 793 (Miss. Ct. App. 2012), aff'd, 138 So. 3d 887, 2014 Miss. LEXIS 100 (Miss. 2014).

Where a county hospital and its employee were sued in tort for injuries related to a car accident that occurred when the employee was running an errand for her employer, the dismissal of the employee from the action under the Mississippi Tort Claims Act did not act as a release of her insurance company. The insurance company remained contractually obligated to defend the county hospital as an additional insured under Miss. Code Ann. § 63-15-43(2)(b). Franklin County Mem'l Hosp. v. Miss. Farm Bureau Mut. Ins. Co., 975 So. 2d 872, 2008 Miss. LEXIS 122 (Miss. 2008).

Omnibus clauses in motor vehicle liability policies are required by statute to cover persons who use a vehicle with either the express or implied permission of the named insured. Vaughn v. State Farm Mut. Auto. Ins. Co., 359 So. 2d 339, 1978 Miss. LEXIS 2258 (Miss. 1978), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988).

The rule that a permittee may not allow a third party to use a named insured's automobile does not preclude recovery under the omnibus clause where first permittee has "broad and unfettered domination" over the insured automobile, and the permission from the insured may be implied particularly where the operation by the second permittee serves some purpose of the first permittee. State Farm Mut. Auto. Ins. Co. v. Moore, 289 So. 2d 909, 1974 Miss. LEXIS 1691 (Miss. 1974), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988).

Where it appeared that the son of an insured had often allowed others to drive the insured vehicle with the insured's apparent knowledge, and without his objection, and at the time of a fatal accident the son was occupying the right front seat of the vehicle which was driven by another, the insured automobile was being operated, at the time of the accident, with the insured's implied permission within the meaning of the omnibus clause of an automobile policy, defining the insured as any person using the vehicle with the permission of the named insured, provided that the actual operation or his other actual use was within the scope of such permission. United States Fidelity & Guaranty Co. v. Stafford, 253 So. 2d 388, 1971 Miss. LEXIS 1218 (Miss. 1971), overruled, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189, 1988 Miss. LEXIS 528 (Miss. 1988).

The omnibus clause in an automobile liability insurance policy which allows the insured to include others as insureds under the policy merely by granting permission to use the vehicle should be construed in the light of the manifest public policy of this state as indicated by the Motor Vehicle Safety-Responsibility Law and the Uninsured Motor Vehicle Law, both of which clearly indicate the legislative policy of protecting the public and providing insurance coverage where persons are injured on the highways of the state. Travelers Indem. Co. v. Watkins, 209 So. 2d 630, 1968 Miss. LEXIS 1464 (Miss. 1968).

5. Uninsured motorists coverage.

In enacting Mississippi's Uninsured Motorist Act (UM Act), Mississippi legislature intended to put "first accident" insureds in as good a position as they would have been in had uninsured motorist purchased automobile liability insurance pursuant to terms of Mississippi's Safety Responsibility Act. Boatner v. Atlanta Specialty Ins. Co., 115 F.3d 1248, 1997 U.S. App. LEXIS 22634 (5th Cir. Miss. 1997).

Language in an insurance policy limiting uninsured motorist (UM) coverage to injury or damage caused by an accident "arising out of the operation, maintenance or use of an uninsured motor vehicle" did not impermissibly narrow the limits of UM coverage intended under Mississippi's UM statute (§ 83-11-101 et seq.); although the UM statute does not specifically set out the connection that must exist between the injury and the uninsured vehicle, § 83-11-101 states that the limits of UM coverage shall be no less than those set forth in the Motor Vehicle Safety Responsibility Law (§ 63-15-1 et seq.), which provides in part that an owner's liability insurance policy which has been certified as proof of financial responsibility shall pay damages "arising out of the ownership, maintenance or use of such motor vehicle" (§ 63-15-43(2)(b)), and therefore the UM policy language satisfied the intent and purpose of the UM statute by affording a person injured by an uninsured motorist the same protection he or she would have if injured by a financially responsible driver. Spradlin v. State Farm Mut. Auto. Ins. Co., 650 So. 2d 1383, 1995 Miss. LEXIS 93 (Miss. 1995).

Where uninsured motorist benefits were written into an assigned risk policy through operation of law, the imposed coverage would be the statutory minimum of $10,000 per vehicle, rather than the amount contracted in a previously canceled policy, where there was no evidence that either party intended to reinstate the policy limits contained in the former policy; since coverage was written into the contract by operation of law, so was the amount of coverage. Harris v. Magee, 573 So. 2d 646, 1990 Miss. LEXIS 900 (Miss. 1990), overruled in part, Meyers v. Am. States Ins. Co., 914 So. 2d 669, 2005 Miss. LEXIS 322 (Miss. 2005).

Clause in uninsured motorist provision of automobile insurance policy providing that insured may not recover for expenses for medical services payable under separate provision of policy does not reduce policy's uninsured motorist limit below statutory minimum, but merely provides that insured would not be paid for medical expenses twice, once under medical payment coverage and again under uninsured motorist provision. Tucker v. Aetna Casualty & Surety Co., 801 F.2d 728, 1986 U.S. App. LEXIS 31464 (5th Cir. Miss. 1986).

An insured may aggregate the limits of liability clause in an insurance policy providing uninsured coverage on two cars to determine the liability of insurer. St. Arnaud v. Allstate Ins. Co., 501 F. Supp. 192, 1980 U.S. Dist. LEXIS 16236 (S.D. Miss. 1980).

Benefits payable under uninsured motorist insurance policy due to injuries resulting in death of insured need not be paid to persons designated under wrongful death statute (§ 11-7-13), but may be paid to surviving spouse in accordance with "facility of payment" clause. Overstreet v. Allstate Ins. Co., 474 So. 2d 572, 1985 Miss. LEXIS 2195 (Miss. 1985).

6. Miscellaneous.

The insurer of a taxicab was entitled to deny coverage to an injured individual on the ground that it was not notified of the accident as soon as practicable where, even though the policy was issued under a voluntary assigned risk plan, it was not subject to the statutory provision making the insurer's liability absolute. Hague v. Liberty Mut. Ins. Co., 571 F.2d 262, 1978 U.S. App. LEXIS 11685 (5th Cir. Miss. 1978).

A sale of a motor vehicle without furnishing the memorandum required by statute, the effect of which would be to avoid a liability policy, will not be presumed. Wright v. Southern Farm Bureau Casualty Ins. Co., 279 F.2d 363, 1960 U.S. App. LEXIS 4520 (5th Cir. Miss. 1960).

7. Exemptions.

Under either Arkansas or Mississippi law, passenger's bodily injury claim arising out of crash of airplane owned by insured fell within exclusion from coverage in commercial general liability (CGL) policy for bodily injury arising out of ownership, maintenance of use of any aircraft owned or operated by any insured. Ranger Ins. Co. v. Heirs & Wrongful Death Beneficiaries of Branning by & Through Tucker, 984 F. Supp. 466, 1997 U.S. Dist. LEXIS 19479 (S.D. Miss. 1997).

Under Mississippi law, radius limitation in commercial truckers liability policy, which confined liability coverage to 50-mile radius of location where insured vehicle was principally garaged, was not contrary to public policy. Stratford Ins. Co. v. Cooley, 985 F. Supp. 665, 1996 U.S. Dist. LEXIS 21696 (S.D. Miss. 1996).

Under Mississippi law, radius limitation in commercial truckers policy that excluded coverage for accidents occurring more than 50 miles from "the town" of principal garaging of insured vehicle was not rendered ambiguous when read in conjunction with declarations page that identified both town of principal garaging and territory in which it was located. Stratford Ins. Co. v. Cooley, 985 F. Supp. 665, 1996 U.S. Dist. LEXIS 21696 (S.D. Miss. 1996).

Under Mississippi law, where truckers liability policy clearly and unambiguously provided only for coverage within 50 miles of identified "town" where truck was identified as being "principally garaged," insured had no reasonable expectation that he had coverage within 50 miles of wherever he decided to garage vehicle, at least not without notice to and approval by insurer. Stratford Ins. Co. v. Cooley, 985 F. Supp. 665, 1996 U.S. Dist. LEXIS 21696 (S.D. Miss. 1996).

Under either Arkansas or Mississippi law, limitation on policy coverage for aircraft accidents under aircraft exclusion was not rendered ambiguous under commercial general liability (CGL) policy by presence of other insurance clause that made policy's coverage excess for any loss arising out of maintenance or use of aircraft, where clause specifically recognized that excess coverage existed only to extent it was not subject to aircraft exclusion. Ranger Ins. Co. v. Heirs & Wrongful Death Beneficiaries of Branning by & Through Tucker, 984 F. Supp. 466, 1997 U.S. Dist. LEXIS 19479 (S.D. Miss. 1997).

8. Waiver.

Under Mississippi law, waiver cannot be used to extend coverage afforded by insurance policy. Stratford Ins. Co. v. Cooley, 985 F. Supp. 665, 1996 U.S. Dist. LEXIS 21696 (S.D. Miss. 1996).

Under Mississippi law, 50-mile radius exclusion upon coverage was limitation on coverage already provided by policy, such that doctrine of waiver could be applied without violating principle that waiver cannot be used to extend coverage afforded by insurance policy. Stratford Ins. Co. v. Cooley, 985 F. Supp. 665, 1996 U.S. Dist. LEXIS 21696 (S.D. Miss. 1996).

Insurer waived right to rely on 50-mile radius limitation in truckers liability policy by failing to assert exclusion for one year following accident despite constructive knowledge through its agents within two weeks of accident's exact location and ability to determine thereafter from its claims file that site was beyond geographic area covered by policy. Stratford Ins. Co. v. Cooley, 985 F. Supp. 665, 1996 U.S. Dist. LEXIS 21696 (S.D. Miss. 1996).

OPINIONS OF THE ATTORNEY GENERAL

Punitive damages cannot be excluded from insurance policies for automobile liability claims. Dale, Oct. 5, 2001, A.G. Op. #01-0660.

RESEARCH REFERENCES

ALR.

Automobile fire, theft, and collision insurance: insurable interest in stolen motor vehicle. 38 A.L.R.4th 538.

Statutory or policy exclusion, from automobile no-fault coverage, of property damage covered by homeowner's policy of household member who is owner, registrant, or operator of vehicle involved. 41 A.L.R.4th 973.

Duty of liability insurer to initiate settlement negotiations. 51 A.L.R.5th 701.

Am. Jur.

34 Am. Jur. Proof of Facts 2d 585, Use of Motor Vehicle by Person Claiming Insurance Coverage.

Law Reviews.

1978 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 97, March, 1979.

Insurance: Enforceability of Automobile Business Exclusion to Automobile Liability Coverage. 53 Miss. L. J. 205, March, 1983.

§ 63-15-45. Notice of cancellation or termination of certified policy.

When an insurance company has certified a motor vehicle liability policy under Section 63-15-39 or Section 63-15-41, the insurance so certified shall not be cancelled or terminated until at least ten (10) days after a notice of cancellation or termination of the insurance so certified shall be placed in the mail, or transmitted by electronic means, to the department. However, such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

HISTORY: Codes, 1942, § 8285-22; Laws, 1952, ch. 359, § 22; Laws, 2016, ch. 410, § 3, eff from and after Jan. 1, 2017.

Cross References — Cancellation or nonrenewal of automobile insurance policy generally, see §§ 83-11-1 et seq.

RESEARCH REFERENCES

ALR.

Liability insurer's unconditional right to cancel policy as affected by considerations of public policy. 40 A.L.R.3d 1439.

Cancellation of compulsory or "financial responsibility" automobile insurance. 44 A.L.R.4th 13.

Am. Jur.

7 Am. Jur. 2d, Automobile Insurance §§ 40-45.

§ 63-15-46. Premium reductions for older drivers successfully completing accident prevention course.

(1) Any rates, rating schedules, or rating manuals for the liability, personal injury protection and collision coverages of a motor vehicle insurance policy shall provide for an appropriate reduction in premium charges as to such coverages when the principal operator of the covered vehicle is an insured fifty-five (55) years of age or older who has successfully completed a motor vehicle accident prevention course approved by the Department of Public Safety. Any discount used by an insurer shall be presumed appropriate unless credible data demonstrates otherwise.

(2) The premium reduction required by this section shall be effective for an insured for a period of three (3) years after successful completion of the approved course, except that the insurer may require, as a condition of maintaining the discount, that the insured:

(a) Not be involved in an accident for which the insured is at fault; and

(b) Not be convicted, plead guilty or plead nolo contendere to a moving traffic violation.

(3) Motor vehicle accident prevention courses for the purposes of this section shall be subject to the approval of the Department of Public Safety. The department shall consider the competency of the personnel offering the course, the quality of the content and activities of the course with respect to its capability to prevent accidents by persons fifty-five (55) years of age or older who complete the course, and the reasonableness of the fee for the course. The department shall establish the minimum number of hours necessary for completion of a course. A course approved by the department shall require persons completing the course to pass a written test evaluating the person's knowledge of the content of the course.

(4) Upon successfully completing the approved course, each person shall be issued a certificate by the organization offering the course which shall be used to qualify for the premium discount required by this section.

(5) This section shall not apply in the event the approved course is taken as punishment specified by a court or other governmental entity resulting from a moving traffic violation.

(6) This section shall apply to policies issued or renewed after January 1, 1988.

HISTORY: Laws, 1987, ch. 492, eff from and after passage (approved April 20, 1987), and applicable to policies issued after January 1, 1988.

RESEARCH REFERENCES

ALR.

Motor vehicle insurance: exclusionary provision relating to age of operator. 83 A.L.R.2d 1236.

Representations as to age or identity of persons who will drive vehicle, or as to extent of their relative use, as avoiding coverage under automobile insurance policy. 29 A.L.R.3d 1139.

Propriety of automobile insurer's policy of refusing insurance, or requiring advance rates, because of age, sex, residence, or handicap. 33 A.L.R.4th 523.

§ 63-15-47. Applicability of chapter to policies of motor vehicle insurance.

This chapter shall not be held to apply to or affect policies of motor vehicle insurance against liability which may now or hereafter be required by any other law of this state. Such policies, if they contain an agreement or are endorsed to conform to the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

HISTORY: Codes, 1942, § 8285-23; Laws, 1952, ch. 359, § 23, eff from and after January 1, 1953.

Cross References — Automobile insurance generally, see §§ 83-11-1 et seq.

RESEARCH REFERENCES

Law Reviews.

Insurance: Enforceability of Automobile Business Exclusion to Automobile Liability Coverage. 53 Miss. L. J. 205, March, 1993.

§ 63-15-49. Bond as proof of financial responsibility.

(1) Proof of financial responsibility may be furnished by filing a bond with the department, accompanied by the statutory recording fee of the chancery clerk to cover the cost of recordation of the notice provided for herein. The bond may be either a surety bond with a surety company authorized to do business within the state or a bond with at least two individual sureties each owning real estate within the state not exempt under the constitution or laws of the State of Mississippi and together having equities equal in value to at least twice the amount of such bond. In cases of a bond with two individual sureties, such real estate shall be scheduled and a description thereof shall appear in the bond approved by the clerk of the chancery court of the county or counties in which the real estate is located and also approved by the tax collector of the county or counties where the property is situated as being free from any delinquent tax liens. Such bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle

liability policy, and shall not be cancellable except after five days' written notice is received by the department. However, cancellation shall not prevent recovery with respect to any right or cause of action arising prior to the date of cancellation. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond. Notice to that effect, which shall include a description of the real estate scheduled in the bond, shall be filed by the department in the office of the chancery clerk of the county where such real estate is situated. Such notice shall be accompanied by the statutory fee for the services of the chancery clerk in connection with the recordation of such notice, and the chancery clerk or his deputy, upon receipt of such notice, shall acknowledge and cause the same to be recorded in the lien records. Recordation shall constitute notice as provided by the statutes governing the recordation of liens on real estate.

(2) If a judgment rendered against the principal on such surety or real estate bond shall not be satisfied within sixty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the persons who executed such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such real estate bond, which foreclosure action shall be brought in like manner and subject to all the provisions of law applicable to an action to foreclose a mortgage on real estate.

HISTORY: Codes, 1942, § 8285-24; Laws, 1952, ch. 359, § 24; Laws, 1968, ch. 361, § 13, eff from and after January 1, 1972.

Cross References — Fees of clerks of chancery court, see § 25-7-9.

RESEARCH REFERENCES

ALR.

Cancellation of compulsory or "financial responsibility" automobile insurance. 44 A.L.R.4th 13.

Am. Jur.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic §§ 33:63, 33:83.

§ 63-15-51. Deposit of cash or securities as proof of financial responsibility.

(1) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him fifteen thousand dollars ($15,000.00) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of fifteen thousand dollars ($15,000.00). The state treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(2) Such deposit shall be held by the state treasurer to satisfy, in

accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

HISTORY: Codes, 1942, § 8285-25; Laws, 1952, ch. 359, § 25, eff from and after January 1, 1953.

§ 63-15-53. Self-insurance.

(1) Any person in whose name more than 25 motor vehicles are licensed may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in subsection (2) of this section.

(2) The department may, in its discretion, upon the application of a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(3) Upon not less than five days notice and a hearing pursuant to such notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

HISTORY: Codes, 1942, § 8285-34; Laws, 1952, ch. 359, § 33, eff from and after January 1, 1953.

JUDICIAL DECISIONS

1. In general.

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866, 2009 Miss. LEXIS 220 (Miss. 2009).

Certificate of self-insurance is not commercial insurance policy subject to provisions of Uninsured Motorist Act. McCoy v. South Cent. Bell Tel. Co., 688 So. 2d 214, 1996 Miss. LEXIS 634 (Miss. 1996).

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic § 33:64.

§ 63-15-55. Acceptance of proof of financial responsibility given by owner for other operators.

Whenever any person required to give proof of financial responsibility under this chapter is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the department shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The department shall designate the restrictions imposed by this section on the face of such person's license.

HISTORY: Codes, 1942, § 8285-26; Laws, 1952, ch. 359, § 26, eff from and after January 1, 1953.

RESEARCH REFERENCES

ALR.

Misrepresentation by applicant for automobile liability insurance as to ownership of vehicle as material to risk. 33 A.L.R.2d 948.

Who is a "spouse" within clause of automobile liability, uninsured motorist, or no-fault insurance policy defining additional insured. 36 A.L.R.4th 588.

Am. Jur.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic § 33:64.

§ 63-15-57. Substitution of proof of financial responsibility.

The department shall consent to the cancellation of any bond or certificate of insurance, or the department shall direct and the state treasurer shall return any money or securities to the person entitled thereto, upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

HISTORY: Codes, 1942, § 8285-27; Laws, 1952, ch. 359, § 27, eff from and after January 1, 1953.

§ 63-15-59. Requirement of new proof of financial responsibility.

Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the department shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license or the nonresident's operating privilege pending the filing of such other proof.

HISTORY: Codes, 1942, § 8285-28; Laws, 1952, ch. 359, § 28, eff from and after January 1, 1953.

§ 63-15-61. Duration of maintenance of proof of financial responsibility; cancellation, return or waiver of proof of financial responsibility.

In all cases, under this chapter, in which a person is required to furnish proof of financial responsibility, he shall maintain such proof for a period of three years, except as otherwise required or permitted in this section. The department shall, upon request, consent to the immediate cancellation of any bond or certificate of insurance, or the department shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

(a) at any time after three years from the date such proof was required when, during the three-year period preceding the request, the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom such proof was furnished; or

(b) in the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) in the event the person who has given proof surrenders his license to the department.

However, the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within one year immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

Whenever any person whose proof has been cancelled or returned under provision (c) of this section applies for a license within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period.

However, the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within one year immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

Whenever any person whose proof has been cancelled or returned under provision (c) of this section applies for a license within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period.

HISTORY: Codes, 1942, § 8285-29; Laws, 1952, ch. 359, § 29; Laws, 1960, ch. 411, § 5; Laws, 1968, ch. 473, § 1, eff from and after passage (approved July 12, 1968).

RESEARCH REFERENCES

ALR.

Cancellation of compulsory or "financial responsibility" automobile insurance. 44 A.L.R.4th 13.

Am. Jur.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 62-64.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic §§ 33:72, 33:73, 33:102, 33:104.

Law Reviews.

Insurance: Enforceability of Automobile Business Exclusion to Automobile Liability Coverage. 53 Miss. L. J. 205, March, 1983.

§ 63-15-63. Transfer of title to vehicle to member of family by person whose license has been suspended or cancelled.

No person whose license or registration has been suspended or cancelled under the provisions of this chapter shall transfer title to the vehicle owned by him to any member of his immediate family until such person has furnished proof of financial responsibility as is otherwise required by the provisions of this chapter and same shall have been approved by the department. A member of a person's immediate family under the provisions hereof shall include any person related to the transferor by blood or marriage within the third degree computed according to the civil law and any person, whether related or not, residing within the same household as the transferor.

HISTORY: Codes, 1942, § 8285-30; Laws, 1952, ch. 359, § 29-a; Laws, 1958, ch. 491.

§ 63-15-65. Assigned risk plans.

Insurance companies, authorized to issue motor vehicle liability policies in this state, shall establish an administrative agency and make necessary reasonable rules in connection therewith, relative to the formation of a plan and procedure to provide a means by which insurance may be assigned to an authorized insurance company for a person required by this chapter to show proof of financial responsibility for the future and who is in good faith entitled to motor vehicle liability insurance in this state, but is unable to secure it through ordinary methods. Such insurance companies shall establish a plan and procedure for the equitable apportionment among such authorized companies of applicants for such policies and for motor vehicle liability policies, including, but not limited to, voluntary agreements by insurance companies to accept such assignments. The premium for assigned risk plans shall not exceed the basic manual rate for risks of like classification at time of application, plus any surcharge as set by the insurance commission. When any such plan has been approved by the insurance commission, all insurance companies authorized to issue motor vehicle liability policies in the State of Mississippi, shall subscribe thereto and participate therein.

The insurance commission may determine, fix, prescribe, promulgate, change, and amend rates or minimum premiums normally applicable to a risk so as to apply to any and every assignment such rates and minimum premiums as are commensurate with the greater hazard of the risk, considering in connection therewith the experience, physical or other conditions of such risk of the person applying for insurance under any such plan.

HISTORY: Codes, 1942, § 8285-35; Laws, 1952, ch. 359, § 34; Laws, 1958, ch. 443.

JUDICIAL DECISIONS

1. In general.

Insurers participating in the automobile assigned risk plan are under no duty to investigate and screen out potentially dangerous drivers. Ervin v. United States Fidelity & Guaranty Co., 365 So. 2d 1208, 1978 Miss. LEXIS 2436 (Miss. 1978).

RESEARCH REFERENCES

Law Reviews.

Insurance: Enforceability of Automobile Business Exclusion to Automobile Liability Coverage. 53 Miss. L. J. 205, March, 1993.

§ 63-15-67. Surrender of license or registration.

Any person whose license or registration shall have been suspended as provided in this chapter, or whose policy of insurance or bond, when required under this chapter, shall have been cancelled or terminated, or who shall neglect to furnish other proof upon request of the department, shall immediately return his license to the department. If any person shall fail to return to the department his license as provided herein, the department shall forthwith direct any peace officer to secure possession thereof and to return the same to the department.

HISTORY: Codes, 1942, § 8285-31; Laws, 1952, ch. 359, § 30, eff from and after January 1, 1953.

§ 63-15-69. Particular offenses and penalties.

(1) Where any person fails to report an accident as required in Section 63-15-9, in addition to any other penalties prescribed by law, the department shall suspend the license of the person failing to make such report, or the nonresident's operating privilege of such person, until such report has been filed and for such further period not to exceed thirty (30) days as the department may fix.

(2) Any person who gives information required in a report or otherwise as provided for in Section 63-15-9, knowing or having reason to believe that such information is false, or who shall forge, or without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned for not more than one (1) year, or both, except where the statement may be made under oath, in which case the person making the false statement under oath shall, upon conviction, be subject to the penalties for perjury.

(3) Any person whose license or nonresident's operating privilege has been suspended or revoked under this chapter, and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this chapter, shall be fined not more than Five Hundred Dollars ($500.00) or imprisoned not exceeding six (6) months, or both.

(4) Any person willfully failing to return his license as required in Section 63-15-67, shall be fined not more than Five Hundred Dollars ($500.00) or imprisoned not to exceed thirty (30) days, or both.

(5) Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than Five Hundred Dollars ($500.00) or imprisoned not more than six (6) months, or both.

(6) In order for an individual who has received a license suspension under the State of Mississippi's Implied Consent Laws to be eligible for reinstatement, in addition to other requirements at law, he or she must provide to the Department of Public Safety, a certificate of insurance as a method of giving proof of financial responsibility as provided in Sections 63-15-37(1), 63-15-39 and 63-15-41, that shall be maintained for not less than a period of three (3) years after issuance in accordance with the requirements as set forth in Section 63-15-61.

HISTORY: Codes, 1942, § 8285-32; Laws, 1952, ch. 359, § 31; Laws, 1970, ch. 488, § 1; Laws, 2016, ch. 410, § 1, eff from and after Jan. 1, 2017.

Editor's Notes — Section 63-15-9, referred to in subsections (1) and (2), was repealed by Laws of 2003, ch. 485, § 2, effective from and after July 1, 2003.

Cross References — Punishment of person convicted of perjury, see § 97-9-61.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

Mississippi Implied Consent Law, see §§ 63-11-1 et seq.

§ 63-15-71. Furnishing by department of abstract relating to person's operating record; fees.

(1) The department shall, upon request and receipt of proper fees, furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person. If there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the department shall so certify.

(2) In addition to any other fees, the department shall charge and collect Two Dollars ($2.00) for furnishing a certified abstract to any person. This additional fee shall be deposited into the Disability and Relief Fund for the Mississippi Highway Safety Patrol.

HISTORY: Codes, 1942, § 8285-03; Laws, 1952, ch. 359, § 3; Laws, 2004, ch. 561, § 14, eff from and after July 1, 2004.

Cross References — Disability and Relief Fund for the Mississippi Highway Safety Patrol, see § 25-13-7.

§ 63-15-73. Effect of chapter upon motor vehicle laws.

This chapter shall in no respect be considered as a repeal of the motor vehicle laws of this state but shall be construed as supplemental thereto.

HISTORY: Codes, 1942, § 8285-36; Laws, 1952, ch. 359, § 35, eff from and after January 1, 1953.

§ 63-15-75. Effect of chapter upon right of plaintiff to rely upon other legal processes.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

HISTORY: Codes 1942, § 8285-38; Laws, 1952, ch. 359, § 37, eff from and after January 1, 1953.

CHAPTER 16.

PUBLIC SAFETY VERIFICATION AND ENFORCEMENT ACT [REPEALED EFFECTIVE JULY 1, 2025]

Sec.

63-16-1. Short title [Repealed effective July 1, 2025].
63-16-3. Creation of electronic motor vehicle insurance verification system; system requirements [Repealed effective July 1, 2025].
63-16-5. Use of verification system by law enforcement [Repealed effective July 1, 2025].
63-16-7. Administration and enforcement of chapter; rules [Repealed effective July 1, 2025].
63-16-9. Repealed.
63-16-11. Applicability; defintion of commercial auto coverage [Repealed effective July 1, 2025].
63-16-13. Failure to maintain liability insurance; penalties; appeal; Uninsured Motorist Identification Fund [Repealed effective July 1, 2025].
63-16-15. Repeal of Sections 63-16-1 through 63-16-13.

§ 63-16-1. Short title [Repealed effective July 1, 2025].

This chapter shall be known as the "Public Safety Verification and Enforcement Act."

HISTORY: Laws, 2012, ch. 504, § 1; reenacted without change, Laws, 2017, ch. 303, § 1, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 439, § 1, eff from and after July 1, 2021.

Editor's Notes — Laws of 2012, ch. 504, §§ 11 provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

Amendment Notes — The 2021 amendment reenacted the section without change.

§ 63-16-3. Creation of electronic motor vehicle insurance verification system; system requirements [Repealed effective July 1, 2025].

(1) The Department of Public Safety, hereinafter referred to in this section as "department," in cooperation with the Commissioner of Insurance and the Department of Revenue, shall establish an accessible common carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle with motor vehicle liability policy requirements under the Mississippi Motor Vehicle Safety-Responsibility Law.

(2) The department, in cooperation with the Department of Revenue if applicable, may contract with a private vendor or vendors to establish and maintain the system.

(3) The system must:

(a) Send requests to insurers for verification of motor vehicle liability insurance using electronic services established by the insurers through the internet, World Wide Web, or a similar proprietary or common carrier electronic system in compliance with the specifications and standards of the Insurance Industry Committee on Motor Vehicle Administration and other applicable industry standards;

(b) Include appropriate provisions to secure its data against unauthorized access and to maintain a record of all requests and responses;

(c) Be accessible, without fee, to authorized personnel of the department, the courts, law enforcement personnel, and other entities authorized by the department under the provisions of Section 63-16-7;

(d) Be able to interface with existing department systems;

(e) Be able to be accessed by authorized users via a secure web browser;

(f) Not more often than every thirty (30) days, receive insurance information from insurers under specifications and standards set forth in paragraph (a) of this subsection or other data file formats as approved by the department to identify motor vehicle insurance policy information; however, no insurer shall be required to provide information in a format other than those set forth by the Insurance Industry Committee on Motor Vehicle Administration "Insurance Data Transfer Guide," as amended;

(g) Provide a means by which low-volume insurers that are unable to deploy an online interface with the system can report insurance policy data to the department or their designee for inclusion in the system;

(h) Provide a means to track separately or distinguish motor vehicles that are subject to a certificate of insurance under Section 63-15-39 or 63-15-41, a certificate of self-insurance under Section 63-15-53, a bond under Section 63-15-49, or a certificate of deposit of money or securities under Section 63-15-51;

(i) Distinguish motor vehicles that are exempt from the provisions of this chapter;

(j) Be available twenty-four (24) hours a day, seven (7) days a week, subject to reasonable allowances for scheduled maintenance or temporary system failures, to verify the insurance status of any motor vehicle in a manner prescribed by the department; and

(k) Be installed and operational not later than March 1, 2016, followed by an appropriate testing period of not less than six (6) months.

(4) Every insurer shall cooperate with the department and the Insurance Department in establishing and maintaining the system and shall provide motor vehicle liability policy status and information to verify liability coverage for a motor vehicle insured by that company that is registered in this state.

HISTORY: Laws, 2012, ch. 504, § 2; Laws, 2015, ch. 447, § 1; reenacted without change, Laws, 2017, ch. 303, § 2, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 439, § 2, eff from and after July 1, 2021.

Editor's Notes — Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

Amendment Notes — The 2021 amendment reenacted the section without change.

Cross References — Mississippi Motor Vehicle Safety-Responsibility Law, see § 63-15-1 et seq.

§ 63-16-5. Use of verification system by law enforcement [Repealed effective July 1, 2025].

(1) A law enforcement officer or authorized employee of a law enforcement agency may, during the course of a traffic stop or accident investigation, access the verification system established under Section 63-16-3 to verify whether a motor vehicle is covered by a valid motor vehicle liability policy in at least the minimum amounts required under Section 63-15-3(j).

(2) The response received from the system supersedes an insurance card produced by a motor vehicle operator, and notwithstanding the display of an insurance card by the operator, the law enforcement officer may issue a complaint and notice to appear to the operator for a violation of the Mississippi Motor Vehicle Safety-Responsibility Law. A law enforcement officer may exercise discretion in issuing a citation during the first sixty (60) days after proof of temporary insurance is issued by an insurance company, if the verification system shows that the insured's policy is expired and the operator provides proof of insurance with a new insurance company or a new insurance card.

(3) Except upon reasonable cause to believe that a driver has violated another traffic regulation or that the driver's motor vehicle is unsafe or not equipped as required by law, a law enforcement officer may not use the verification system to stop a driver for operating a motor vehicle in violation of this chapter.

HISTORY: Laws, 2012, ch. 504, § 3; Laws, 2015, ch. 447, § 2; reenacted without change, Laws, 2017, ch. 303, § 3, eff from and after July 1, 2017; brought forward without change, Laws, 2018, ch. 454, § 4, eff from and after passage (approved (April 13, 2018); reenacted without change, Laws, 2021, ch. 439, § 3, eff from and after July 1, 2021.

Editor's Notes — Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

Amendment Notes — The 2021 amendment reenacted the section without change.

Cross References — Mississippi Motor Vehicle Safety-Responsibility Law, see § 63-15-1 et seq.

§ 63-16-7. Administration and enforcement of chapter; rules [Repealed effective July 1, 2025].

(1) The Department of Public Safety, hereinafter referred to in this section as "department," shall administer and enforce the provisions of this chapter, as applicable, and shall make rules necessary for the administration of the motor vehicle insurance verification system created under Section 63-16-3.

(2) The rules must:

(a) Establish standards and procedures for accessing the system by authorized personnel of the department, the courts, law enforcement personnel and any other entities authorized by the department that are consistent with specifications and standards of the Insurance Industry Committee on Motor Vehicle Administration and other applicable industry standards;

(b) Provide for the suspension of a driver's license when required by this chapter;

(c) Prohibit the reinstatement of a driver's license unless the applicable fines have been paid; and

(d) Provide for insurance information from insurers, not more often than every thirty (30) days, to identify motor vehicle insurance policy information; however, no insurer shall be required to provide such information in a format other than those set forth by the Insurance Industry Committee on Motor Vehicle Administration "Insurance Data Transfer Guide," as amended.

(3) The department may adopt additional rules to:

(a) Assist authorized users in interpreting responses received from the motor vehicle insurance verification system and determining the appropriate action to be taken as a result of a response; and

(b) Otherwise clarify system operations and business rules.

HISTORY: Laws, 2012, ch. 504, § 4; Laws, 2015, ch. 447, § 3; reenacted without change, Laws, 2017, ch. 303, § 4, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 439, § 4, eff from and after July 1, 2021.

Editor's Notes — Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

Amendment Notes — The 2021 amendment reenacted the section without change.

§ 63-16-9. Repealed.

Repealed by Laws of 2015, ch. 447, § 4, effective upon approval April 20, 2015.

§ 63-16-9. [Laws, 2012, ch. 504, § 5, eff from and after July 1, 2013.]

Editor's Notes — Former § 63-16-9 required every owner of a motor vehicle to be in compliance with mandatory motor vehicle liability insurance coverage to receive registration or renew registration.

§ 63-16-11. Applicability; defintion of commercial auto coverage [Repealed effective July 1, 2025].

(1) This chapter shall not apply to any motor vehicle that:

(a) Has commercial auto coverage;

(b) Is qualified for a fleet registration;

(c) Is part of a self-insured corporate or individual fleet registered under Section 27-19-66, or self-insured under Section 63-15-53;

(d) Is included in an insurance binder that has not been entered into the system at the time the verification system is accessed;

(e) Is exempted from the proof of insurance requirement under Section 63-15-4(1); or

(f) Has a gross vehicle weight of sixteen thousand (16,000) pounds or greater.

(2) For the purposes of this chapter, "commercial auto coverage" is defined as any coverage provided to an insured, regardless of number of vehicles or entity covered, under a commercial coverage form and rated from a commercial manual approved by the Department of Insurance. This chapter shall not apply to vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis.

HISTORY: Laws, 2012, ch. 504, § 6; reenacted without change, Laws, 2017, ch. 303, § 5, eff from and after July 1, 2017; reenacted without change, Laws, 2021, ch. 439, § 5, eff from and after July 1, 2021.

Editor's Notes — Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

Amendment Notes — The 2021 amendment reenacted the section without change.

§ 63-16-13. Failure to maintain liability insurance; penalties; appeal; Uninsured Motorist Identification Fund [Repealed effective July 1, 2025].

(1) If the operator of a motor vehicle being operated on the public roads,

streets or highways of the State of Mississippi or registered in the State of Mississippi has been found failing to have motor vehicle liability insurance in at least the minimum amounts required under Section 63-15-3(j), it is a misdemeanor and, upon conviction, is punishable by a fine of One Hundred Dollars ($100.00) and suspension of driving privilege for a period of one (1) year or until the owner of the motor vehicle shows proof of liability insurance that is in compliance with the liability limits required by Section 63-15-3(j) and has paid the fines and assessments imposed and the driver's license reinstatement fees imposed by the Department of Public Safety. A judge shall determine whether the defendant is indigent, and if a determination of indigence is made, shall authorize the reinstatement of that person's driver's license upon proof of mandatory liability insurance subject to compliance with a payment plan for any fines, assessments and/or fees. If such fines are levied in a municipal court, the funds from such fines shall be deposited in the general fund of the municipality. If such fines are levied in any of the courts of the county, the funds from such fines shall be deposited in the general fund of the county. A person convicted of a criminal offense under this subsection (1) shall not be convicted of a criminal offense under Section 63-15-4(4) arising from the same incident.

(2)(a) There is created in the State Treasury a special fund to be designated as the "Uninsured Motorist Identification Fund." The fund shall consist of monies deposited therein as provided under subsection (1) of this section and monies from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund; however, one-half (½) of any monies in excess of the amount needed to defray the expenses and costs of the verification system created under Section 63-16-3 remaining in the fund at the end of a fiscal year shall be transferred to a special fund created in the State Treasury for the purpose of funding a Highway Patrol Trooper School, and one-half (½) of any monies in excess of the amount needed to defray the expenses and costs of the verification system created under Section 63-16-3 remaining in the fund at the end of a fiscal year shall be transferred to the Mississippi Trauma Care Systems Fund created under Section 41-59-75.

(b) Monies in the Uninsured Motorist Identification Fund may be used by the Department of Public Safety, upon appropriation by the Legislature, only for the purpose of defraying expenses and costs for the motor vehicle insurance verification system created under Section 63-16-3. In addition, at any time during a fiscal year, if the Department of Public Safety determines that funds in the Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund created under Section 45-2-1 are insufficient, the department may request the State Fiscal Officer to transfer funds from the Uninsured Motorist Identification Fund. The State Fiscal Officer may make an appropriate transfer if he determines that the funds in the Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund are insufficient and the funds in the Uninsured Motorist Identification Fund will be sufficient for defraying the expenses and costs for the motor vehicle insurance verification system created under Section 63-16-3. Monies in the fund used for the purposes described in this paragraph (b) shall be in addition to other funds available from any other source for such purposes.

HISTORY: Laws, 2012, ch. 504, § 7; Laws, 2014, ch. 437, § 2; Laws, 2015, ch. 447, § 5; reenacted without change, Laws, 2017, ch. 303, § 6, eff from and after July 1, 2017; Laws, 2018, ch. 454, § 2, eff from and after passage (approved April 13, 2018); reenacted without change, Laws, 2021, ch. 439, § 6, eff from and after July 1, 2021.

Editor's Notes — Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

Amendment Notes — The 2021 amendment reenacted the section without change.

Cross References — Imposition of state assessment in addition to all court imposed fines or other penalties for violation of this section, see § 99-19-73.

§ 63-16-15. Repeal of Sections 63-16-1 through 63-16-13.

Sections 63-16-1 through 63-16-13 shall stand repealed from and after July 1, 2025.

HISTORY: Laws, 2012, ch. 504, § 10; reenacted and amended, Laws, 2017, ch. 303, § 7, eff from and after July 1, 2017; Laws, 2021, ch. 439, § 7, eff from and after July 1, 2021.

Editor's Notes — Laws of 2012, ch. 504, § 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

Amendment Notes — The 2021 amendment extended the date of the repealer for §§ 63-16-1 through 63-16-13 by substituting "July 1, 2025" for "July 1, 2022."

CHAPTER 17.

MANUFACTURE, SALES AND DISTRIBUTION

Bill of Sale; Numbers and Marks on Motor Vehicles. 63-17-1
Distribution and Sales. 63-17-51
Dealer Contracts. 63-17-131
Motor Vehicle Warranty Enforcement Act. 63-17-151
Sales of All-Terrain Vehicles and Motorcycles. 63-17-171
Recreational Vehicle Franchise Law. 63-17-201

BILL OF SALE; NUMBERS AND MARKS ON MOTOR VEHICLES

Sec.
63-17-1. Sale, purchase, etc., of automobile without bill of sale.
63-17-3. Recordation of bill of sale; affidavit in lieu of bill of sale; fees.
63-17-5. Display of bill of sale to law enforcement officer.
63-17-7. Failure of officer to perform acts authorized by § 63-17-5; fees of officers.
63-17-9. Seizure of automobile by law enforcement officer.
63-17-11 through 63-17-15. Repealed.
63-17-17. Penalties.

§ 63-17-1. Sale, purchase, etc., of automobile without bill of sale.

It shall be unlawful for any person, firm, or corporation to sell, purchase or own any automobile unless the seller shall furnish to and the buyer shall take and reserve, a bill of sale, signed by the seller, showing the make and model, vehicle identification number and other identifying marks thereof, the address of the seller, and the name and address of the person from whom the seller purchased. Said bill of sale may be in the following form:

"Name of purchaser ________ Address of purchaser ________ Manufacturer ________ Model ________ Vehicle identification number ________ Other marks ________ Name and address of person from whom seller purchased ________ Signature of seller ________ Address of seller ________."

HISTORY: Codes, Hemingway's 1921 Supp. § 5789x; 1930, § 5589; 1942, § 8065; Laws, 1920, ch. 222; Laws, 1970, ch. 483, § 8, eff from and after passage (approved April 6, 1970).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Failure to execute bill of sale.
3. Instructions.

1. In general.

Violation of this section [Code 1942, § 8065] will not be presumed. Wright v. Southern Farm Bureau Casualty Ins. Co., 279 F.2d 363, 1960 U.S. App. LEXIS 4520 (5th Cir. Miss. 1960).

2. Failure to execute bill of sale.

Failure of seller to execute bill of sale for motor truck held not to render contract void. Equitable Credit Co. v. Cooper, 146 Miss. 868, 111 So. 749, 1927 Miss. LEXIS 217 (Miss. 1927).

3. Instructions.

In action to recover damages arising from operation of truck by companion of one to whom defendant sold the truck, the trial court properly refused an instruction to the jury that a sale of personal property is not required to be in writing in order to constitute a sale, and that it was not necessary that a bill of sale be executed in order to convey title, since such instruction was too broad and calculated to confuse the jury. Richton Tie & Timber Co. v. Smith, 210 Miss. 148, 48 So. 2d 618, 1950 Miss. LEXIS 330 (Miss. 1950).

RESEARCH REFERENCES

ALR.

National Motor Vehicle Theft Act. 56 A.L.R.2d 1309.

Rights of seller of motor vehicle with respect to purchase price or security on failure to comply with laws concerning transfer of title. 58 A.L.R.2d 1351.

Gift of automobile. 100 A.L.R.2d 1219.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 34, 40.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic § 33:24.

CJS.

60 C.J.S., Motor Vehicles §§ 75 et seq.

§ 63-17-3. Recordation of bill of sale; affidavit in lieu of bill of sale; fees.

The bill of sale provided for in Section 63-17-1 may be recorded in a book to be provided and kept for that purpose in the office of the clerk of the chancery court in the county of the residence of the owner of the automobile. The owner or other person having an automobile in his possession who has no bill of sale may make affidavit, stating the name of the party from whom purchase was made, place and date of purchase, particularly describing the automobile, by motor number, and otherwise as prescribed for a bill of sale, which affidavit may be recorded. A copy of the bill of sale, or affidavit of ownership as made and certified by the clerk, shall be received and accepted in lieu of the original. The clerk shall charge and collect a fee of fifty cents for recording and certifying the record thereof, and shall charge and collect a fee of fifty cents for furnishing a certified copy of such bill of sale or affidavit.

HISTORY: Codes, Hemingway's 1921 Supp. § 5789y; 1930, § 5590; 1942, § 8066; Laws, 1920, ch. 222.

§ 63-17-5. Display of bill of sale to law enforcement officer.

Any owner or person having an automobile in his possession shall, upon request of any sheriff, constable, justice of the peace, mayor, marshal or police officer, exhibit to such officer for inspection the bill of sale provided for in Section 63-17-1, or shall permit such officer to make inspection of such automobile, and shall answer all inquiries truthfully that may be propounded by such officer with references to such automobile and the history of the title thereto. Refusal so to do shall subject such person to immediate arrest by such officer, without warrant, and subject him to the penalties prescribed by law.

HISTORY: Codes, Hemingway's 1921 Supp. § 5789z; 1930, § 5591; 1942, § 8067; Laws, 1920, ch. 222.

Editor's Notes — Mississippi Const., Art. 6, § 171, provides that references in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 63-17-7. Failure of officer to perform acts authorized by § 63-17-5; fees of officers.

If any officer mentioned in Section 63-17-5 shall fail, neglect or refuse, upon request of any person who shall declare himself to be interested, to perform any act authorized in said section, or to furnish a written statement to such person, showing the result of such examination and inquiry, such officer shall be subject to the penalties prescribed by law. Any such request of such officer shall be accompanied by payment, or tender, of a fee of one dollar for each examination, and fifty cents a mile for each mile or fraction thereof over one-fourth, going to and returning from the place of examination; moreover, the place shall not be more than five miles distant and within the jurisdiction of the officer.

HISTORY: Codes, Hemingway's 1921 Supp. § 5789a1; 1930, § 5592; 1942, § 8068; Laws, 1920, ch. 222.

§ 63-17-9. Seizure of automobile by law enforcement officer.

Automobile owners shall not be required at all times to keep the bill of sale provided for in Section 63-17-1 with their automobiles. However, failure to have the same therein shall not excuse them, or any person in possession, from furnishing the information required by Section 63-17-5, and upon affidavit made before the officer demanding the information that the person making the same has good reason to believe and does believe that such automobile is stolen, such officer may, in his discretion, take possession thereof and retain the same for such reasonable time as may be required for the necessary investigation to be made.

HISTORY: Codes, Hemingway's 1921 Supp. § 5789b1; 1930, § 5593; 1942, § 8069; Laws, 1920, ch. 222.

JUDICIAL DECISIONS

1. In general.

The highway patrol had no authority to deliver a stolen pickup truck, which had an altered vehicle identification number and had been seized from an innocent purchaser pursuant to a valid search warrant, to an insurance company, which had paid the owner the full value of the truck under a theft loss insurance policy and was therefore the lawful owner of the vehicle, absent court approval with no advance notice to the innocent purchaser of its intent to do so and without giving him an opportunity to contest the matter in a court of competent jurisdiction; the appropriate procedure would have been for the highway patrol, once the truck served no further purpose in the criminal investigation or prosecution, to make a motion in the justice court for authority to release it to the insurance company, and to give the innocent purchaser and the insurance company reasonable notice of such application and an opportunity to be heard; however, the circuit court erred in directing return of the pickup truck to the innocent purchaser without making the insurance company a party to the hearing or giving it any notice of the proceeding, as this was a blatant violation of the insurance company's right to due process. Weaver v. State, 597 So. 2d 609, 1992 Miss. LEXIS 177 (Miss. 1992).

§§ 63-17-11 through 63-17-15. Repealed.

Repealed by Laws, 1989, ch. 469, § 8, eff from and after July 1, 1989.

§ 63-17-11. [Codes, Hemingway's 1921 Supp. § 5789c1; 1930, § 5594; 1942, § 8070; Laws, 1920, ch. 222]

§ 63-17-13. [Codes, Hemingway's 1921 Supp. § 5789c1; 1930, § 5594; 1942, § 8070; Laws, 1920, ch. 222]

§ 63-17-15. [Codes, Hemingway's 1921 Supp. § 5789d1; 1930, § 5595; 1942,§ 8071; Laws, 1920, ch. 222]

Editor's Notes — Former § 63-17-11 prohibited the changing or mutilation of motor vehicle numbers or marks. For similar provisions, see former § 97-17-101.

Former § 63-17-13 provided for the confiscation of motor vehicles with changed or mutilated numbers or marks. For similar provisions, see former § 97-17-101.

Former § 63-17-15 authorized the board of supervisors to refund or pay automobile owners money realized from the sale of their automobiles condemned and sold for having altered motor identification numbers.

§ 63-17-17. Penalties.

Any person violating any of Sections 63-17-1 through 63-17-9, shall, upon conviction, be fined not more than Five Hundred Dollars ($500.00) or imprisoned in the county jail not more than six (6) months, or be both so fined and imprisoned.

HISTORY: Codes, Hemingway's 1921 Supp. § 5789d1; 1930, § 5595; 1942, § 8071; Laws, 1920, ch. 222; Laws, 1989, ch. 469, § 7, eff from and after July 1, 1989.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

DISTRIBUTION AND SALES

Sec.
63-17-51. Short title.
63-17-53. Legislative findings and declarations.
63-17-55. Definitions.
63-17-57. Creation of Motor Vehicle Commission; appointment and terms of members; officers.
63-17-59. Qualifications of members of commission.
63-17-61. Organization of commission; oath and bond of members; quorum; voting; seal.
63-17-63. Meetings of commission.
63-17-65. Compensation of members of commission.

Sec.
63-17-67. Executive director; employment of clerical and professional assistance; office.
63-17-69. Promulgation, etc., of rules and regulations by commission.
63-17-71. Motor vehicle commission fund.
63-17-73. Offenses and penalties.
63-17-74. Sale of motor vehicle not titled and registered in name of seller prohibited; exceptions; penalty for violation.
63-17-75. Applications for licenses.
63-17-76. Application for used motor vehicle dealer's license to be accompanied by documentation of completion of education seminar; conduct of seminars; approval of seminars by State Tax Commission.
63-17-77. License fees; expiration dates.
63-17-79. Specification of location of business; effect of change of location.
63-17-80. Motor vehicle lessors required to be licensed.
63-17-81. License of salesman.
63-17-83. License of factory representative or distributor representative.
63-17-85. Grounds for denial, revocation, or suspension of license; assessment of civil penalty in lieu of suspension of license; collection and disposition of penalty.
63-17-86. Obligations of manufacturers, distributors and motor vehicle dealers; establishment of rate for parts and labor; rebuttal and protest.
63-17-87. Limited revocation or suspension of license.
63-17-89. Hearings; prerequisite to denial, revocation or suspension of license.
63-17-91. Hearings; calling of hearing.
63-17-93. Hearings; notice; location; effect of failure to appear.
63-17-95. Hearings; conduct; decisions.
63-17-97. Execution and enforcement of summons, citation or subpoena.
63-17-99. Appeals from decisions of commission; finality of decisions.
63-17-101. Recovery of damages and attorney fees by licensee.
63-17-103. Restrictions on right to advertise motor vehicle as new; enforcement of restriction.
63-17-105. Penalties.
63-17-107. Repealed.
63-17-109. Right of first refusal.
63-17-111. Owner of dealership may appoint successor by written agreement; manufacturer or dealer must honor succession unless good cause shown; procedure for refusing to honor succession.
63-17-113. Modification of franchise agreement; good cause required for termination, cancellation or nonrenewal.
63-17-115. Unreasonable discrimination prohibited.
63-17-116. Relevant market areas established for new motor vehicle dealers in counties having certain populations; notice to same line-make motor vehicle dealer in relevant market area required; standing to object to additional franchise agreements; factors for determining good cause for additional new motor vehicle dealer.
63-17-117. Warranty or sales incentive audits to be conducted within certain amount of time after payment of disputed claim or end of incentive or rebate program; approved and paid claims not to be charged back to dealer absent fraud, improper repair, or failure to substantiate claim.
63-17-118. Manufacturer or distributor to compensate motor vehicle dealer upon termination, cancellation or nonrenewal of franchise or discontinuation of motor vehicle line or make or parts essential to line or make.
63-17-119. Suit to recover damages; venue; requirement that dealer waive right to trial void.

§ 63-17-51. Short title.

Sections 63-17-51 through 63-17-119 shall be known and may be cited as the "Mississippi Motor Vehicle Commission Law."

HISTORY: Codes, 1942, § 8071.7-01; Laws, 1970, ch. 478, § 1; reenacted without change, Laws, 1983, ch. 344, § 1; Laws, 1991, ch. 305, § 1; Laws, 2000, ch. 418, § 11, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference appearing in the amendment made to this section by § 11 of ch. 418, Laws 2000. Section 11 of ch. 418 amended the section by substituting "Sections 63-17-51 through 63-17-121" for "Sections 63-17-51 through 63-17-105." However, as directed by the Joint Committee, the reference to "Sections 63-17-51 through 63-17-121" was changed to "Sections 63-17-51 through 63-17-119." The Joint Committee ratified the correction at its June 29, 2000 meeting.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 161 et seq.

CJS.
60 C.J.S., Motor Vehicles § 186.

§ 63-17-53. Legislative findings and declarations.

The legislature finds and declares that the distribution and sales of motor vehicles in the State of Mississippi vitally affects the general economy of the state and the public interest and the public welfare. The legislature further finds and declares that it is necessary, in the exercise of its police power, to regulate and to license motor vehicle manufacturers, factory branches and divisions, distributors, distributor branches and divisions, distributor representatives, wholesalers, wholesaler branches and divisions, dealers and salesmen doing business in the State of Mississippi in order (1) to prevent frauds, unfair practices, discrimination, impositions and other abuses upon the citizens of the State of Mississippi, (2) to avoid undue control of the independent motor vehicle dealer by motor vehicle manufacturing and distributing organizations, (3) to foster and keep alive vigorous and healthy competition, (4) to prevent the creation or perpetuation of monopolies, (5) to prevent the practice of requiring the buying of special features, accessories, special models, appliances and equipment not desired by a motor vehicle dealer or the ultimate purchaser, (6) to prevent false and misleading advertising, (7) to promote and keep alive a sound system of distribution of motor vehicles to the public, and (8) to promote the public safety and welfare.

HISTORY: Codes, 1942, § 8071.7-02; Laws, 1970, ch. 478, § 2; reenacted without change, Laws, 1983, ch. 344, § 2; Laws, 1991, ch. 305, § 2, eff from and after July 1, 1991.

§ 63-17-55. Definitions.

The following words, terms and phrases, when used in the Mississippi

Motor Vehicle Commission Law, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Motor vehicle" means any motor-driven vehicle of the sort and kind required to have a Mississippi road or bridge privilege license, and shall include, but not be limited to, motorcycles. "Motor vehicle" shall also mean an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of person or persons or property on a public highway and having a gross vehicle weight rating of more than sixteen thousand (16,000) pounds, whether or not attached to a vehicle chassis. The term "motor vehicle" excludes electric bicycles and personal delivery devices.

(b) "Motor vehicle dealer" or "dealer" means any person, firm, partnership, copartnership, association, corporation, trust or legal entity, not excluded by paragraph (c) of this section, who holds a bona fide contract or franchise in effect with a manufacturer, distributor or wholesaler of new motor vehicles, and a license under the provisions of the Mississippi Motor Vehicle Commission Law, and such duly franchised and licensed motor vehicle dealers shall be the sole and only persons, firms, partnerships, copartnerships, associations, corporations, trusts or legal entities entitled to sell and publicly or otherwise solicit and advertise for sale new motor vehicles as such.

(c) The term "motor vehicle dealer" does not include:

(i) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(ii) Public officers while performing their duties as such officers;

(iii) Employees of persons, corporations or associations enumerated in paragraph (c)(i) of this section when engaged in the specific performance of their duties as such employees; or

(iv) A motor vehicle manufacturer operating a project as defined in Section 57-75-5(f)(iv)1; and the provisions of the Mississippi Motor Vehicle Commission Law shall not apply to:

1.a. Any lease by such a motor vehicle manufacturer of three (3) or fewer motor vehicles at any one time and related vehicle maintenance, of any line of vehicle produced by the manufacturer or its subsidiaries, to any one (1) employee of the motor vehicle manufacturer on a direct basis; or

b. Any sale or other disposition of such motor vehicles by the motor vehicle manufacturer at the end of a lease through direct sales to employees of the manufacturer or through an open auction or auction limited to dealers of the manufacturer's vehicle line or its subsidiaries' vehicle lines; or

2. Any sale or other disposition by such a motor vehicle manufacturer of motor vehicles for which the manufacturer obtained distinguishing number tags under Section 27-19-309(8).

(d) "New motor vehicle" means a motor vehicle which has not been previously sold to any person except a distributor or wholesaler or motor vehicle dealer for resale.

(e) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his capacity as such dealer, who in good-faith purchases such new motor vehicle for purposes other than for resale.

(f) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging or otherwise disposing of a new motor vehicle to an ultimate purchaser for use as a consumer.

(g) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer whose duties include the selling or offering for sale of new motor vehicles.

(h) "Commission" means the Mississippi Motor Vehicle Commission.

(i) "Manufacturer" means any person, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new motor vehicles.

(j) "Distributor" or "wholesaler" means any person, firm, association, corporation or trust, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

(k) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation or trust who manufactures or assembles new motor vehicles for sale to distributors or wholesalers, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives.

(*l*) "Distributor branch" means a branch or division office similarly maintained by a distributor or wholesaler for the same purposes a factory branch or division is maintained.

(m) "Factory representative" means a representative employed by a person, firm, association, corporation or trust who manufactures or assembles new motor vehicles, or by a factory branch, for the purpose of making or promoting the sale of his, its or their new motor vehicles, or for supervising or contacting his, its or their dealers or prospective dealers.

(n) "Distributor representative" means a representative similarly employed by a distributor, distributor branch or wholesaler.

(o) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations and trusts, or any other forms of business enterprise, or any legal entity.

(p) "Good faith" means the duty of each party to any franchise agreement, and all officers, employees or agents of such party, to act in a fair and equitable manner toward each other in the performance of the respective obligations under the franchise agreement.

(q) "Coerce" means to compel or attempt to compel by threat or duress. However, recommendation, exposition, persuasion, urging or argument shall not be deemed to constitute coercion.

(r) "Special tools" are those which a dealer was required to purchase by the manufacturer or distributor for service on that manufacturer's product.

(s) "Motor vehicle lessor" means any person, not excluded by paragraph (c) of this section, engaged in the motor vehicle leasing or rental business.

(t) "Specialty vehicle" means a motor vehicle manufactured by a second stage manufacturer by purchasing motor vehicle components, e.g. frame and drive train, and completing the manufacturer of finished motor vehicles for the purpose of resale with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public. Specialty vehicles include garbage trucks, ambulances, fire trucks, buses, limousines, hearses and other similar limited purpose vehicles as the commission may by regulation provide.

(u) "Auto auction" means (i) any person who provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers, (ii) any motor vehicle dealer licensed to sell used motor vehicles selling motor vehicles using an auction format but not on consignment, or (iii) any person who provides the facilities for or is in the business of selling in an auction format motor vehicles.

(v) "Motor home" means a motor vehicle that is designed and constructed primarily to provide temporary living quarters for recreational, camping or travel use.

(w) "Dealer-operator" means the individual designated in the franchise agreement as the operator of the motor vehicle dealership.

(x) "Franchise" or "franchise agreement" means a written contract or agreement between a motor vehicle dealer and a manufacturer or its distributor or factory branch by which the motor vehicle dealer is authorized to engage in the business of selling or leasing the specific makes, models or classifications of new motor vehicles marketed or leased by the manufacturer and designated in the agreement or any addendum to such agreement.

(y) "Net cost" means the price the motor vehicle dealer pays for new motor vehicles, supplies, parts, equipment, signs, furnishings and special tools, minus any applicable discounts or subsidies obtained by the motor vehicle dealer.

(z) "Line or make" means a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor or importer offered for sale, lease or distribution pursuant to a common trademark, service mark or brand name; however:

(i) Multiple brand names or marks may constitute a single line or make, but only when included in a common motor vehicle dealer agreement and the manufacturer, distributor or importer offers such vehicles bearing the multiple names of marks together only, and not separately, to its authorized motor vehicle dealers.

(ii) Motor vehicles bearing a common brand name or mark may constitute separate line or makes when such vehicles are of different vehicle types or are intended for different types of use, provided that either:

1. The manufacturer has expressly defined or covered the subject line or makes of vehicles as separate and distinct line or makes in the applicable dealer agreements; or

2. The manufacturer has consistently characterized the subject vehicles as constituting separate and distinct line or makes to its dealer network.

(aa) "Site-control agreement" or "exclusive use agreement" means an agreement that, regardless of its name, title, form or the parties entering into it, has the effect of:

(i) Controlling the use and development of the premises of a motor vehicle dealer's franchise or facilities;

(ii) Requiring a motor vehicle dealer to establish or maintain an exclusive motor vehicle dealership facility on the premises of the motor vehicle dealer's franchise or facility;

(iii) Restricting the power or authority of the dealer or the lessor, if the motor vehicle dealer leases the dealership premises, to transfer, sell, lease, develop, redevelop or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase or lease or any similar arrangement; or

(iv) Establishing a valuation process or formula for the motor vehicle dealership premises that does not allow for the motor vehicle dealership premises to be transferred, sold or leased by the motor vehicle dealer at the highest and best use valuation for the motor vehicle dealership premises.

(bb) "Market area" means the area of responsibility set forth in the franchise agreement.

(cc) "Core parts" means those original vehicle manufacturer parts that are listed in the original vehicle manufacturer's or distributor's current parts catalog, for which there is a core charge and which are returnable to the manufacturer or distributor.

(dd) "Pre-delivery preparation obligations" means all work and services, except warranty work, performed on new motor vehicles by motor vehicle dealers at the direction of the vehicle manufacturer prior to the delivery of such vehicles to the first retail consumer.

(ee) "Warranty work" means all labor, including that of a diagnostic character, performed, and all parts, including original or replacement parts, and components, including engine, transmission, and other parts assemblies, installed by motor vehicle dealers on motor vehicles which are reasonably incurred by motor vehicle dealers (other than the incidental expenses incurred in performing labor and installing parts on motor vehicles) in fulfilling a manufacturer's obligations under a new motor vehicle warranty, a recall, or a certified pre-owned warranty, to consumers, including, but not limited to, the expense of shipping or returning defective parts to the manufacturer, when required by the manufacturer.

(ff) "Repair order" means an invoice, paid by a retail customer, and closed as of the time of submission, encompassing one or more repairs to a new motor vehicle, and reflecting, in the case of a parts mark-up submission, the cost of each part and the sale price thereof, and in the case of a labor rate submission, the total charges for labor and the total number of hours that produced such charges, which invoice may be submitted in electronic form.

(gg) "Qualified repair" means a repair to a motor vehicle, paid by a retail customer, which would have come within the manufacturer's new motor vehicle warranty, but for the motor vehicle having exceeded the chronological or mileage limit of such warranty, and which does not constitute any of the work encompassed by subsection (4) of Section 63-17-86.

(hh) "Qualified repair order" means a repair order which encompasses, in whole or in part, a qualified repair or repairs.

HISTORY: Codes, 1942, § 8071.7-03; Laws, 1970, ch. 478, § 3; Laws, 1982, ch. 392; reenacted, Laws, 1983, ch. 344, § 3; reenacted without change, Laws, 1991, ch. 305, § 3; Laws, 1994, ch. 399, § 2; Laws, 2000, ch. 418, § 8; Laws, 2000, 3rd Ex Sess, ch. 1, § 20; Laws, 2006, ch. 432, § 2; Laws, 2007, ch. 303, § 9; Laws, 2014, ch. 349, § 2, eff from and after July 1, 2014; Laws, 2021, ch. 315, § 1, eff from and after July 1, 2021; Laws, 2021, ch. 355, § 8, eff from and after July 1, 2021; Laws, 2022, ch. 439, § 8, eff from and after July 1, 2022.

Joint Legislative Committee Note — Section 1 of Chapter 315, Laws of 2021, effective from and after July 1, 2021 (approved March 16, 2021), amended this section. Section 8 of Chapter 355, Laws of 2021, effective from and after July 1, 2021 (approved March 17, 2021), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 20, 2021, meeting of the Committee.

Amendment Notes — The first 2021 amendment (ch. 315), in (b), inserted "or 'dealer'"; in (p), substituted "agents of such party" for "agents franchise"; and added (dd) through (hh).

The second 2021 amendment (ch. 355), in (a), added the last sentence.

The 2022 amendment added "and personal delivery devices" in (a).

Cross References — Applicability of the definition of "manufacturer" to the Motor Vehicle Warranty Enforcement Act (§§ 63-17-151 et seq.), see § 63-17-155.

JUDICIAL DECISIONS

1. In general.

In an action in which the purchaser of a truck alleged that the seller had represented a used truck as a new one in violation of Mississippi's Consumer Protection Act (§§ 75-24-1 et seq.) and the Mississippi Motor Vehicle Commission Law (§§ 63-17-51 et seq.), the trial judge did not err in finding, as a matter of law, that the truck was new, even though a third party had previously attempted to purchase the truck but had returned it one week after driving it home, where no title had ever been issued to the third party, and the purchaser was told at the time of the sale that there were 1,790 miles on the odometer because the truck had either been test driven or had been the subject of a sale that had fallen through. Hernandez v. Vickery Chevrolet-Oldsmobile Co., 652 So. 2d 179, 1995 Miss. LEXIS 154 (Miss. 1995).

In an action in which the purchaser of a truck alleged that the seller had represented a used truck as a new one in violation of Mississippi's Consumer Protection Act (§§ 75-24-1 et seq.) and the Mississippi Motor Vehicle Commission Law (§§ 63-17-51 et seq.), the trial court did not err in failing to consider § 75-2-401(2), which pertains to passing of title, since the issue was whether the truck was new or used when it was purchased and this question could be answered without exceeding the confines of the Motor Vehicle Commission Law and the Motor Vehicle Title Law (§§ 63-21-1 et seq). Hernandez v. Vickery Chevrolet-Oldsmobile Co., 652 So. 2d 179, 1995 Miss. LEXIS 154 (Miss. 1995).

Definition of "coercion" in Miss. Code Annotated § 63-17-55(q) does not impose duty of good faith and fair dealing, in light of stringent definition of "good faith", as definition of good faith is same in both state law and federal Automobile Dealer's Day in Court Act (15 USCS §§ 1221-1225); allegations by automobile dealer that manufacturer refused dealer's request to relocate dealership, reduced dealership area of primary responsibility, reduced dealership's planning potential, thereby making it impossible for dealer to continue viable dealership, and manufacturer's refusal to approve new dealership, thereby preventing dealer from selling his dealership, did not state cause of action under Automobile Dealer's Day in Court Act (15 USCS §§ 1221- 1225) and therefore did not state cause of action under analogous Miss. Act, Miss. Code Annotated § 63-17-73. Hubbard Chevrolet Co. v. General Motors Corp., 682 F. Supp. 873, 1987 U.S. Dist. LEXIS 13259 (S.D. Miss. 1987), aff'd, 873 F.2d 873, 1989 U.S. App. LEXIS 7497 (5th Cir. Miss. 1989).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. Trials, All-Terrain Vehicle Litigation, §§ 1 et seq.

6 Am. Jur. Proof of Facts 3d, Defective Design of an All-Terrain Vehicle, §§ 1 et seq.

Law Reviews.

1982 Mississippi Supreme Court Review: Torts. 53 Miss. L. J. 167, March 1983.

§ 63-17-57. Creation of Motor Vehicle Commission; appointment and terms of members; officers.

There is hereby created the Mississippi Motor Vehicle Commission to be composed of eight (8) members, one (1) of whom shall be appointed by the Attorney General from the state at large for a term of four (4) years and one (1) of whom shall be appointed by the Secretary of State from the state at large for a term of four (4) years, and six (6) licensees who shall be appointed by the Governor, one (1) from the state at large and one (1) from each of the five (5) congressional districts of this state for terms of the following duration: the term of the member from the state at large shall expire at the time the incumbent Governor's term expires, the term of the member appointed from the First Congressional District shall expire on June 30, 1973, the term of the member appointed from the Second Congressional District shall expire on June 30, 1974, the term of the member appointed from the Third Congressional District shall expire on June 30, 1976, the term of the member from the Fourth Congressional District shall expire on June 30, 1977, and the term of the member appointed from the Fifth Congressional District shall expire on June 30, 1978. Each member shall serve until his successor is appointed and qualified. At the expiration of the term of the member initially appointed by the

Attorney General each successor member shall be appointed for a term of four (4) years by the incumbent Attorney General, and at the expiration of the term of the member appointed by the Secretary of State each successor member shall be appointed for a term of four (4) years by the incumbent Secretary. At the expiration of a term for which each of the initial appointments of the Governor is made, each successor member shall be appointed for a term of seven (7) years except that the term of the member appointed from the state at large shall be coterminous with that of the Governor making the appointment. The members of the commission as constituted on July 1, 2006, who are appointed by the Governor and whose terms have not expired shall serve the balance of their terms, after which time the gubernatorial appointments shall be made as follows: The Governor shall appoint one (1) member of the commission from each of the four (4) congressional districts and two (2) from the state at large.

The member appointed from the state at large by the Governor shall serve as chairman of the commission and one (1) of the other members appointed by the Governor shall be designated by him to serve as vice chairman. In the absence of the chairman at any meeting of the commission the vice chairman shall preside and perform the duties of the chairman.

In the event of a vacancy created by the death, resignation or removal of any member of the commission the vacancy shall be filled by appointment of the Governor, Attorney General or the Secretary of State, as the case may be, for the unexpired portion of the term. All appointments made pursuant to this section shall be made with the advice and consent of the Senate.

HISTORY: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; reenacted without change, Laws, 1983, ch. 344, § 4; reenacted without change, Laws, 1991, ch. 305, § 4; Laws, 2006, ch. 432, § 3, eff from and after July 1, 2006.

OPINIONS OF THE ATTORNEY GENERAL

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

§ 63-17-59. Qualifications of members of commission.

Each of the members appointed to the commission shall be a citizen of the United States and a resident of the State of Mississippi and a qualified elector of the jurisdiction from which appointed, and each shall be of good moral character. The members of the commission initially appointed by the attorney general and the secretary of state and all members subsequently appointed by them shall never have been engaged in the manufacture, distribution or sale of motor vehicles and shall not thereafter be so engaged as long as they are members of the commission. The members of the commission initially appointed by the governor and all such members subsequently appointed by an incumbent governor shall be qualified to receive a license under the provisions of the Mississippi Motor Vehicle Commission Law and shall be holders of a current license within ninety days after their respective appointments and shall continue to be holders of a current license at all times thereafter so long as they are such members.

HISTORY: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; reenacted without change, Laws, 1983, ch. 344, § 5; reenacted without change, Laws, 1991, ch. 305, § 5, eff from and after July 1, 1991.

OPINIONS OF THE ATTORNEY GENERAL

The broad authority given to the Motor Vehicle Commission places the determination of licensee qualifications within the discretion of that Commission. Further, a licensee appointed to membership on the Commission is entitled to serve his full term unless his license is suspended or revoked pursuant to § 63-17-85, or he moves out of the state, or he is no longer a qualified elector of the jurisdiction from which he was appointed. Arider, July 17, 2004, A.G. Op. 04-0332.

§ 63-17-61. Organization of commission; oath and bond of members; quorum; voting; seal.

The commission shall meet at Jackson and complete its organization immediately after the entire membership thereof has been appointed and has qualified.

The chairman and each member of the commission shall, before entering upon the discharge of the duties of his office, take and subscribe to the oath of office prescribed by Section 268 of the constitution of this state, and shall file the same in the office of the secretary of state.

The commission shall purchase either a blanket position honesty or faithful performance bond from some surety company authorized to do business in this state in the penal sum of ten thousand dollars ($10,000.00), made payable to the State of Mississippi, conditioned for the honest and faithful performance of the duties of the chairman and each member of the commission, the executive secretary of the commission and all other employees of the commission, said bond to be approved by the governor and filed in the office of the secretary of state. The commission shall keep such a bond in force at all times and from and after the date the commission is organized.

A majority of the commission shall constitute a quorum for the transaction of any business. Neither the chairman nor the vice-chairman, when the vice-chairman is presiding, shall be entitled to vote unless his vote is necessary to break a tie vote.

The commission shall adopt and use a common seal for the authentication of its records and orders.

HISTORY: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; reenacted without change, Laws, 1983, ch. 344, § 6; reenacted without change, Laws, 1991, ch. 305, § 6, eff from and after July 1, 1991.

§ 63-17-63. Meetings of commission.

The commission shall hold all of its regular monthly meetings in its office at Jackson, Mississippi. The commission may, upon approval of a majority of its members, hold special meetings and the hearings provided for under Section 63-17-93 at any time and place within the State of Mississippi.

HISTORY: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; reenacted without change, Laws, 1983, ch. 344, § 7; reenacted without change, Laws, 1991, ch. 305, § 7, eff from and after July 1, 1991.

§ 63-17-65. Compensation of members of commission.

The chairman and members of the commission shall receive per diem in the amount set forth in Section 25-3-69 for each and every day actually and necessarily spent in attending the meetings of the commission, and shall be reimbursed for their reasonable subsistence and traveling expenses necessarily incurred in the performance of their duties in accordance with Section 25-3-41. The chairman shall require itemized statements of all such reimbursable expenses and shall audit or cause to be audited such statements before approving the same for payment.

HISTORY: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; reenacted and amended, Laws, 1983, ch. 344, § 8; reenacted without change, Laws, 1991, ch. 305, § 8, eff from and after July 1, 1991.

JUDICIAL DECISIONS

1. In general.

Definition in § 63-17-55(q) of coercion as lack of good faith does not in effect revert term "good faith" to its customary common law meaning of imposing duty of good faith and fair dealing, but rather is simply defined with reference to "good faith" as that term is defined in statute. Hubbard Chevrolet Co. v. General Motors Corp., 682 F. Supp. 873, 1987 U.S. Dist. LEXIS 13259 (S.D. Miss. 1987), aff'd, 873 F.2d 873, 1989 U.S. App. LEXIS 7497 (5th Cir. Miss. 1989).

§ 63-17-67. Executive director; employment of clerical and professional assistance; office.

The commission shall employ a qualified person to serve as executive director thereof, to serve at the pleasure of the commission, and shall fix his salary, subject to the approval of the State Personnel Board, and shall define and prescribe his duties. The executive director shall be in charge of the commission's office and shall devote full time to the duties thereof. His duties shall include, but not be limited to, the collection of all fees and charges under the provisions of the Mississippi Motor Vehicle Commission Law, keeping a record of all proceedings of the commission and an accurate account of all monies received and disbursed by the commission, all of which records shall be considered as public records. The commission may employ such clerical and professional help and incur such expenses as may be reasonably necessary for the proper discharge of its duties.

The commission shall maintain its office and transact its business, except as otherwise provided, at Jackson, Mississippi, and the Department of Finance and Administration shall approve suitable quarters and the remuneration therefor.

HISTORY: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; Laws, 1977, ch. 411, § 1; reenacted and amended, Laws, 1983, ch. 344, § 9; reenacted and amended, Laws, 1991, ch. 305, § 9, eff from and after July 1, 1991.

§ 63-17-69. Promulgation, etc., of rules and regulations by commission.

The commission shall have power to prescribe, issue, amend and rescind such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of the Mississippi Motor Vehicle Commission Law. No rule or regulation shall be effective until thirty days after copies of the proposed rule or regulation shall have been mailed to all motor vehicle dealers operating in the State of Mississippi, and a representative of each manufacturer, wholesaler, and distributor whose motor vehicles are sold therein, whether said representative is located within or without the State of Mississippi, and a notice setting forth either the terms or substance of said proposed rule or regulation and the time and place of a hearing thereon shall have been published in a newspaper of general circulation in the state and published in the City of Jackson. Such hearing may be held at any time twenty days after publication of such notice, but such rules or regulations shall not become effective until a hearing thereon. All rules, regulations and forms adopted by the commission shall be filed with its executive secretary and shall be readily available for public inspection and examination during reasonable business hours. A copy of said rules, regulations and forms shall also be filed and recorded in the office of the secretary of state. Any interested person shall have the right to petition the commission for issuance, amendment or repeal of a rule or regulation.

HISTORY: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; reenacted without change, Laws, 1983, ch. 344, § 10; reenacted without change, Laws, 1991, ch. 305, § 10, eff from and after July 1, 1991.

JUDICIAL DECISIONS

1. Liability.

Where the buyer purchased a Jeep that was previously involved in an accident, the seller did not have a duty to disclose the prior damages under Regulation One, promulgated by the Mississippi Motor Vehicle Commission under Miss. Code Ann. § 63-17-69; the seller was entitled to summary judgment in the buyers' suit for damages. Holman v. Howard Wilson Chrysler Jeep, Inc., 972 So. 2d 645, 2006 Miss. App. LEXIS 841 (Miss. Ct. App. 2006), rev'd, 2007 Miss. LEXIS 544 (Miss. Sept. 27, 2007).

§ 63-17-71. Motor vehicle commission fund.

All funds received by the commission shall be deposited in the State Treasury to the credit of a special fund to be known as the "motor vehicle commission fund." All expenses incurred in the organization, maintenance and operation of the commission shall be paid from such special fund. The expenditure of all such funds shall be made only pursuant to appropriation approved by the legislature and as provided by law. The receipts and disbursements of the commission shall be audited annually by the state auditor.

HISTORY: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; reenacted without change, Laws, 1983, ch. 344, § 11; Laws, 1984, ch. 488, § 264; reenacted without change, Laws, 1991, ch. 305, § 11, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence. The word "the" was inserted between "to" and "credit" so that "shall be deposited in the State Treasury to credit of a special fund" now reads as "shall be deposited in the State Treasury to the credit of a special fund." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 63-17-73. Offenses and penalties.

(1) It is unlawful:

(a) For any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesman, manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, wholesaler branch or division, factory representative or distributor representative, as such, in this state without first obtaining a license therefor as provided in the Mississippi Motor Vehicle Commission Law, regardless of whether or not the person, firm, association, corporation or trust maintains or has a place or places of business in this state. Any person, firm, association, corporation or trust engaging, acting or serving in more than one (1) of the capacities or having more than one (1) place where the business is carried on or conducted shall be required to obtain and hold a current license for each capacity and place of business.

(b) For a motor vehicle dealer or a motor vehicle salesman:

(i) To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser. However, this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer.

(ii) To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle.

(iii) To resort to or use any false or misleading advertisement in connection with his business as a motor vehicle dealer or motor vehicle salesman.

(iv) To sell an extended service contract, extended maintenance plan or similar product that is not offered, endorsed or sponsored by a manufacturer or distributor without disclosing to the consumer, orally and in writing, that the offered product is not provided or supported by a manufacturer or distributor.

(c) For a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesaler branch or division, or officer, agent or other representative thereof, to coerce, or attempt to coerce, any motor vehicle dealer:

(i) To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered by the motor vehicle dealer.

(ii) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer thereof.

(iii) To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever.

(iv) To contribute or pay money or anything of value into any cooperative or other advertising program or fund.

This paragraph (c) shall not apply to manufacturers of motor homes governed by the provisions of Sections 63-17-201 through 63-17-221.

(d) For a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesaler branch or division, or officer, agent or other representative thereof:

(i) To refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, any motor vehicles as are covered by such franchise or contract specifically publicly advertised by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be considered a violation of this subsection if the failure is due to acts of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes or other causes over which the manufacturer, distributor or wholesaler, or any agent thereof, has no control.

(ii) To coerce, or attempt to coerce any motor vehicle dealer to enter into any agreement, with the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, and the dealer. However, good-faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this subsection.

(iii) To terminate or cancel the franchise or selling agreement of any dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of such franchise or selling agreement. "Due cause" shall be defined as a breach by the dealer of a material provision of the franchise agreement which breach has not been cured within a reasonable time after the dealer has been given written notice of the breach. The burden of proving that due cause exists shall be upon the party attempting to terminate, cancel or not renew the franchise or selling agreement. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for such termination or cancellation. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, at least sixty (60) days before the contractual term of his franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal, in those cases where there is no intention to renew the franchise or selling agreement. In no event shall the contractual term of any franchise or selling agreement expire, without the written consent of the motor vehicle dealer involved, prior to the expiration of at least sixty (60) days following such written notice. Any motor vehicle dealer who receives written notice that his franchise or selling agreement is being terminated or cancelled or who receives written notice that his franchise or selling agreement will not be renewed, may, within the sixty-day notice period, file with the commission a verified complaint for its determination as to whether the termination or cancellation or nonrenewal is unfair within the purview of the Mississippi Motor Vehicle Commission Law, and the franchise agreement shall continue in effect until final determination of the issues raised in the complaint notwithstanding anything to the contrary contained in the law or in the franchise or selling agreement.

(iv) To require, attempt to require, coerce or attempt to coerce a dealer, by franchise agreement or otherwise, or as a condition to the renewal or continuation of a franchise agreement, to materially change the dealer's method of conducting business, not including its facilities, if the change would impose substantial and unreasonable financial hardship on the business of the motor vehicle dealer in light of the business objective of the proposed change, unless the change is voluntarily agreed to by the dealer for separate and valuable consideration.

(v) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs which result in such lesser actual price. The provisions of this subparagraph shall not apply so long as a manufacturer, distributor or wholesaler, or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at the same price. This subparagraph shall not be construed to prevent the offering of volume discounts if such discounts are equally available to all franchised motor vehicle dealers of the same line or make in this state.

The provisions of this subsection shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by such dealer in a driver education program, to sales to a motor vehicle dealer for resale to any unit of government, federal, state or local, or to bona fide fleet sales.

(vi) To offer to sell or to sell parts and/or accessories to any new motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same or a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts and/or accessories for use in his own business. However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets, and nothing herein contained shall be construed to prevent a manufacturer, distributor or wholesaler, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories, the parts and accessories as may be ordered by such motor vehicle dealer for resale to retail outlets, at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories.

(vii) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the motor vehicle dealer at all times meets any capital standards agreed to between the dealership and the manufacturer, distributor or wholesaler, provided such standards are deemed reasonable by the commission.

(viii) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no motor vehicle dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or any right thereunder without the consent of the manufacturer, distributor or wholesaler which consent shall not be unreasonably withheld.

(ix) To condition unreasonably the renewal or extension of a franchise on a motor vehicle dealer's substantial renovation of the motor vehicle dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the motor vehicle dealer. The manufacturer shall notify the motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed renewal or extension, but in no case less than one hundred eighty (180) days prior to the renewal or extension. Upon receipt of written notification, a motor vehicle dealer shall have sixty (60) days to file a protest with the commission, and the manufacturer shall demonstrate to the commission the need for the demand in view of the need to service the public and the economic conditions existing in the motor vehicle industry and the market area served by the motor vehicle dealer at the time the action would be required of the motor vehicle dealer. As part of any such condition the manufacturer shall offer the motor vehicle dealer a reasonable initial supply and model mix of motor vehicles to meet the sales levels necessary to support the increased overhead incurred by the motor vehicle dealer by reason of the renovation, construction, purchase or rental of a new place of business consistent with nationally applied standards.

(x) To require, coerce or attempt to coerce a motor vehicle dealer to refrain from participation in the management of, investment in, the acquisition of, or the current operation of any other line of motor vehicles or related products, as long as the motor vehicle dealer maintains a reasonable line of credit for each dealership and the motor vehicle dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer or distributor. The reasonable facilities' requirements may not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel or display space when the requirements are unreasonable considering current economic conditions in the market area and not otherwise justified by reasonable business considerations. The burden of proving by a preponderance of the evidence that the current economic conditions and reasonable business considerations justify exclusive facilities is on the manufacturer. Voluntary and noncoerced acceptance of such conditions by the motor vehicle dealer in writing for separate and valuable consideration shall not constitute a violation.

(xi) To fail or refuse to sell or offer to sell to all motor vehicle dealers in a line or make, every motor vehicle sold or offered for sale under the franchise agreement to any motor vehicle dealer of the same line or make; or to unreasonably require a motor vehicle dealer to pay an extra fee, purchase unreasonable advertising displays or any other materials, or to unreasonably require the dealer-operator to remodel, renovate or recondition its existing facilities as a prerequisite to receiving a certain model or series of vehicles. However, the failure to deliver any such motor vehicle shall not be considered a violation of this section if the failure is not arbitrary and is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo or other cause of which the manufacturer or distributor has no control. This provision shall not apply to manufacturers of recreational vehicles.

(xii) To condition the sale, transfer, relocation or renewal of a franchise or dealer agreement or to condition sales, services, parts or finance incentives upon site-control agreement; however, voluntary and noncoerced acceptance of such conditions by the motor vehicle dealer in writing, shall not constitute a violation.

(xiii) To assign or change a motor vehicle dealer's market area under the franchise or motor vehicle dealer's agreement arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the motor vehicle dealer's market area, and without first having provided the motor vehicle dealer's with written notice of the change in the motor vehicle dealer's market area and a detailed description of the change and reasons therefor.

(xiv) To attempt to coerce, or coerce, a motor vehicle dealer to adhere to performance standards that are not applied uniformly to other similarly situated motor vehicle dealers.

(xv) To establish any performance standard or program for measuring motor vehicle dealer's performance that may have a material impact on a motor vehicle dealer that is not fair, reasonable and equitable, or applying any such standard or program to a motor vehicle dealer in a manner that is not fair, reasonable and equitable. If dealership performance standards are based on a survey, the manufacturer or distributor shall establish the objectivity of the survey process and provide this information to any motor vehicle dealer covered by the survey request. Within fifteen (15) business days of a request by the motor vehicle dealer, a manufacturer shall disclose in writing to the motor vehicle dealer a description of the performance standard or program and all relevant information used in the application of the performance standard or program to that motor vehicle dealer unless the manufacturer has already provided the information.

(xvi) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for the ultimate purchasers prior to the motor vehicle dealer's receipt of written official price increase notification. A sales contract signed by the ultimate purchaser that includes model and firm price shall constitute evidence of each such order provided that the vehicle is in fact delivered to that purchaser.

(xvii) To attempt to require, coerce or attempt to coerce any new motor vehicle dealer to sell, offer to sell or sell exclusively an extended service contract, extended maintenance plan or similar product, including, without limitation, GAP products, offered, endorsed or sponsored by the manufacturer or distributor by any of the following means:

1. By an act or statement made by the manufacturer or distributor that will adversely impact the motor vehicle dealer whether it is express or implied; or
2. By a provision in a franchise agreement that the motor vehicle dealer shall sell, offer to sell or sell exclusively an extended service contract, extended warranty plan or similar product offered, endorsed or sponsored by the manufacturer or distributor; or
3. By measuring the motor vehicle dealer's performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor; or
4. By requiring the motor vehicle dealer to actively promote the sale or extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor.

Nothing in this subparagraph shall prohibit a manufacturer or distributor from providing incentive programs to a new motor vehicle dealer who makes the voluntary decision to offer to sell, sell or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the manufacturer or distributor.

(xviii) To require a motor vehicle dealer to provide its customer lists or service files to the manufacturer or distributor, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for reasonable marketing purposes, for evaluation of dealer performance, for analytics or for the submission to the franchisor for any services supplied by the franchisee for any claim for warranty parts or repairs. Nothing in this section shall limit the franchisor's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(xix) To release or cause to be released a motor vehicle dealer's nonpublic customer information to another motor vehicle dealer unless the franchise has been terminated, the customer has relocated to an address that is outside of the motor vehicle dealer's market area, the customer has transacted business with another motor vehicle dealer of the same brand, a customer has not transacted with the dealer from which a vehicle was purchased for a period of nine (9) months, or the motor vehicle dealer consents to the sharing of customer information with other dealers.

(xx) To coerce, attempt to coerce, require or attempt to require any motor vehicle dealer to provide installment financing with a specified financial institution.

(xxi) To require, coerce or attempt to coerce a dealer or successor dealer to construct or substantially alter a facility or premises if such construction or alteration would be unreasonable under the circumstances.

(xxii) To require, coerce or attempt to coerce a dealer or successor dealer to construct or substantially alter a facility or premises if the same area of the facility or premises has been constructed or substantially altered within the last ten (10) years and the construction or alteration was required and approved by the manufacturer as a part of a program, standard or policy, except for improvements made to comply with health or safety laws, or to accommodate the technology requirements necessary to sell or to service a motor vehicle. As used in this subsection, "substantially alter" means an alteration that substantially impacts the architectural features, characteristics, or integrity of a structure or lot. The term does not include routine maintenance reasonably necessary to maintain a dealership in attractive condition, or items directly protected by federal intellectual property rights of the manufacturer. If, during such ten-year period, the manufacturer revises an existing, or establishes a new program, standard, policy, bonus, incentive, rebate, or other benefit for the construction or substantial alteration of a dealership facility or premises, a motor vehicle dealer who completed a facility as a part of a prior program, standard, or policy within the ten-year period and elects not to comply with the applicant's or manufacturer's requirements under the revised or new program, standard, or facility-related policy will not be eligible for any bonus, incentive, rebate, or other benefit under the revised or new program but shall remain entitled to all benefits under the prior program according to the terms of the prior program in place when the dealer began to perform under the program. If the prior program under which the dealer completed a facility construction or substantial alteration does not contain a specific time period during which the manufacturer or distributor must provide payments or benefits to a dealer, then the manufacturer or distributor may not deny the dealer payment or benefits under the terms of that prior program, as it existed when the dealer began to perform under the prior program, for the balance of the ten-year period, regardless of whether the manufacturer's or distributor's facility program has been changed or canceled.

(xxiii) To require, coerce, or attempt to coerce a dealer located in this state to purchase goods or facility construction or maintenance services for items not trademarked or otherwise directly protected by federal intellectual property rights of the manufacturer from a vendor selected, identified, or designated by a manufacturer, distributor, affiliate, or captive finance source when the dealer may obtain goods or facility construction or maintenance services for items not trademarked or otherwise directly protected by federal intellectual property rights of the manufacturer of the same quality, material, and design from a vendor selected by the dealer, provided the dealer obtains prior approval from the manufacturer, distributor or affiliate, for the use of the dealer's selected vendor. Goods shall include signs or sign components to be purchased or leased by the dealer which are not trademarked or otherwise directly protected by the federal intellectual property rights of the manufacturer. Such approval by the manufacturer, distributor or affiliate may not be unreasonably withheld. For purposes of this subparagraph (xxiii), the term "goods" does not include moveable displays, brochures, and promotional materials containing material subject to the intellectual property rights of a manufacturer or distributor, or special tools as reasonably required by the manufacturer, or parts to be used in repairs under warranty or recall obligations of a manufacturer or distributor. If the manufacturer, distributor or affiliate claims that a vendor chosen by the dealer cannot supply goods or facility construction or maintenance services for items not trademarked or otherwise directly protected by federal intellectual property rights of the manufacturer which are the same quality, material, and design, the dealer may file a protest with the commission. When a protest is filed, the commission shall promptly inform the manufacturer, distributor, affiliate, or captive finance source that a protest has been filed. The commission shall conduct a hearing on the merits of the protest within ninety (90) days following the filing of a response to the protest. The manufacturer, distributor or affiliate shall bear the burden of proving that the goods or facility construction or maintenance services for items not trademarked or otherwise directly protected by federal intellectual property rights of the manufacturer chosen by the dealer are not of the same quality, material or design to those required by the manufacturer, distributor or affiliate.

This paragraph (d) shall not apply to manufacturers of motor homes governed by the provisions of Sections 63-17-201 through 63-17-221.

(2) Concerning any sale of a motor vehicle or vehicles to the State of Mississippi, or to the several counties or municipalities thereof, or to any other political subdivision thereof, no manufacturer, distributor or wholesaler shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offer or offers to all other of its dealers within the state. If the inducements above mentioned are made, the manufacturer, distributor or wholesaler shall give simultaneous notice thereof to all of its dealers within the state.

(3) It is unlawful to be a broker. For the purpose of this subsection, "broker" means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(a) A new motor vehicle dealer or agent or employee of such a dealer; or

(b) A distributor or an agent or employee of such a distributor.

However, an individual shall not be deemed to be a broker if he or she is the owner of the new or used motor vehicle which is the object of the brokering transaction.

(4)(a) For purposes of this subsection, the term "Stop-Sale" or "Do-Not-Drive" order means a notification issued by a manufacturer to its franchised new motor vehicle dealers stating that certain used vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or noncompliance, or a federal emissions recall.

(b) A manufacturer shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer to perform recall repairs. Compensation for recall repairs shall be reasonable. If parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by a dealer authorized to sell and service new vehicles of the same line-make within thirty (30) days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a Stop-Sale or Do-Not-Drive order on the vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least one percent (1%) of the value of the vehicle per month beginning on the date that is thirty (30) days after the date on which the Stop-Sale or Do-Not-Drive order was provided to the dealer until the earlier of either of the following:

(i) The date the recall or remedy parts are made available; or

(ii) The date the dealer sells, trades, or otherwise disposes of the affected used motor vehicle.

(c) The value of a used vehicle shall be the average trade-in value for used vehicles as indicated in an independent third party guide for the year, make, and model, of the recalled vehicle.

(d) This subsection shall apply only to used vehicles subject to safety or emissions recalls pursuant to and recalled in accordance with federal law and regulations adopted thereunder and where a Stop-Sale or Do-Not-Drive order has been issued and repair parts or remedy remain unavailable for thirty (30) days or longer. This subsection further shall apply only to new motor vehicle dealers holding an affected used vehicle for sale:

(i) In inventory at the time the Stop-Sale or Do-Not-Drive order was issued; or

(ii) Which was taken in the used vehicle inventory of the dealer as a consumer trade-in incident to the purchase of a new vehicle from the dealer after the Stop-Sale or Do-Not-Drive order was issued; and

(iii) That are a line-make that the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

(e) It shall be a violation of this subsection for a manufacturer to reduce the amount of compensation otherwise owed to an individual new motor vehicle dealer, whether through a chargeback, removal of the individual dealer from an incentive program or reduction in amount owed under an incentive program solely because the new motor vehicle dealer has submitted a claim for reimbursement under this subsection. This subsection shall not apply to an action by a manufacturer that is applied uniformly among all dealers of the same line-make in the state.

(f) All reimbursement claims made by new motor vehicle dealers pursuant to this subsection for recall remedies or repairs, or for compensation where no part or repair is reasonably available and the vehicle is subject to a Stop-Sale or Do-Not-Drive order shall be subject to the same limitations and requirements as a warranty reimbursement claim made under paragraph (j) of Section 63-17-85. In the alternative, a manufacturer may compensate its franchised dealers under a national recall compensation program provided the compensation under the program is equal to or greater than that provided under paragraph (b) of this subsection (4); or the manufacturer and dealer otherwise agree.

(g) A manufacturer may direct the manner and method in which a dealer must demonstrate the inventory status of an affected used motor vehicle to determine eligibility under this subsection, provided that the manner and method may not be unduly burdensome and may not require information that is unduly burdensome to the dealer.

(h) Nothing in this subsection shall require a manufacturer to provide total compensation to a dealer which would exceed the total average trade-in value of the affected used motor vehicle as originally determined under paragraph (b) of this subsection (4).

(i) If a recall remedy for an affected use motor vehicle is available under a federal statute or regulation, then a dealer may opt to be compensated under either the federal statute or authority of this subsection but may not combine the remedies.

HISTORY: Codes, 1942, § 8071.7-05; Laws, 1970, ch. 478, § 5; reenacted without change, Laws, 1983, ch. 344, § 12; reenacted without change, Laws, 1991, ch. 305, § 12; Laws, 1994, ch. 399, § 3; Laws, 2000, ch. 418, § 9; Laws, 2006, ch. 432, § 4; Laws, 2014, ch. 349, § 3; Laws, 2014, ch. 532, § 12, eff from and after Oct. 1, 2014; Laws, 2019, ch. 394, § 1, eff from and after July 1, 2019.

Joint Legislative Committee Note — Section 3 of Chapter 349, Laws of 2014, effective from and after July 1, 2014 (approved March 17, 2014), amended this section. Section 12 of Chapter 532, Laws of 2014, effective from and after October 1, 2014 (approved April 24, 2014), also amended this section. As set out above, this section reflects the language of Section 12 of Chapter 532, Laws of 2014, which contains language that specifically provides that it supersedes § 63-17-73 as amended by Chapter 349, Laws of 2014.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal statutory references in this section by making the following changes: in the fourth sentence of subsection (1)(d)(xxiii), substituting "this subparagraph (xxiii)" for "this subdivision"; and in subsection (4)(f), inserting "of this subsection (4)" following "paragraph (b)." The Joint Committee ratified the correction at its August 10, 2022, meeting.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

Cross References — Denial of an application, or revocation or suspension of a license for commission of a prohibited act or failure to perform requirements of this section, see § 63-17-85.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Termination of franchise without cause.
3. Filing of complaint.

1. In general.

It was illegal for the customers' demonstrator vehicle to be represented and sold as a new car under the Mississippi Vehicle Commission Act, Miss. Code Ann. § 63-17-73(1)(b)(2). Holman v. Howard Wilson

Chrysler Jeep, Inc., 972 So. 2d 564, 2008 Miss. LEXIS 28 (Miss. 2008).

In a case in which buyers of a demonstrator vehicle sued a car dealership for claims related to the purchase of the vehicle, it was illegal for the demonstrator vehicle, which had been damaged in an automobile accident, to be represented and sold as a new car under the Motor Vehicle Commission Act. Holman v. Howard Wilson Chrysler Jeep, Inc., 2007 Miss. LEXIS 544 (Miss. Sept. 27, 2007), op. withdrawn, sub. op., 972 So. 2d 564, 2008 Miss. LEXIS 28 (Miss. 2008).

In an action in which the purchaser of a truck alleged that the seller had represented a used truck as a new one in violation of Mississippi's Consumer Protection Act (§§ 75-24-1 et seq.) and the Mississippi Motor Vehicle Commission Law (§§ 63-17-51 et seq.), the trial judge did not err in finding, as a matter of law, that the truck was new, even though a third party had previously attempted to purchase the truck but had returned it one week after driving it home, where no title had ever been issued to the third party, and the purchaser was told at the time of the sale that there were 1,790 miles on the odometer because the truck had either been test driven or had been the subject of a sale that had fallen through. Hernandez v. Vickery Chevrolet-Oldsmobile Co., 652 So. 2d 179, 1995 Miss. LEXIS 154 (Miss. 1995).

In an action in which the purchaser of a truck alleged that the seller had represented a used truck as a new one in violation of Mississippi's Consumer Protection Act (§§ 75-24-1 et seq.) and the Mississippi Motor Vehicle Commission Law (§§ 63-17-51 et seq.), the trial court did not err in failing to consider § 75-2-401(2), which pertains to passing of title, since the issue was whether the truck was new or used when it was purchased and this question could be answered without exceeding the confines of the Motor Vehicle Commission Law and the Motor Vehicle Title Law (§§ 63-21-1 et seq). Hernandez v. Vickery Chevrolet-Oldsmobile Co., 652 So. 2d 179, 1995 Miss. LEXIS 154 (Miss. 1995).

Definition of "coercion" in Miss. Code Annotated § 63-17-55(9) does not impose duty of good faith and fair dealing, in light of stringent definition of "good faith", as definition of good faith is same in both state law and federal Automobile Dealer's Day in Court Act (15 USCS §§ 1221-1225); allegations by automobile dealer that manufacturer refused dealer's request to relocate dealership, reduced dealership area of primary responsibility, reduced dealership's planning potential, thereby making it impossible for dealer to continue viable dealership, and manufacturer's refusal to approve new dealership, thereby preventing dealer from selling his dealership, did not state cause of action under Automobile Dealer's Day in Court Act (15 USCS §§ 1221- 1225) and therefore did not state cause of action under analogous Miss. Act, Miss. Code Annotated § 63-17-73. Hubbard Chevrolet Co. v. General Motors Corp., 682 F. Supp. 873, 1987 U.S. Dist. LEXIS 13259 (S.D. Miss. 1987), aff'd, 873 F.2d 873, 1989 U.S. App. LEXIS 7497 (5th Cir. Miss. 1989).

2. Termination of franchise without cause.

Automobile manufacturer's refusal to grant dealer permission to relocate and refusal to approve successor dealership in area did not constitute constructive termination of its dealership without cause, with coercion and without good faith, in violation of § 63-17-73(1)(d). Hubbard Chevrolet Co. v. General Motors Corp., 682 F. Supp. 873, 1987 U.S. Dist. LEXIS 13259 (S.D. Miss. 1987), aff'd, 873 F.2d 873, 1989 U.S. App. LEXIS 7497 (5th Cir. Miss. 1989).

3. Filing of complaint.

Car dealer's complaint was timely filed with the Mississippi Motor Vehicle Commission following the car dealer's receipt from an automobile manufacturer of a notice of termination of a dealership agreement because the car dealer filed its verified complaint within the sixty day notice period—the sixty days preceding the effective date of termination. Nissan N. Am., Inc. v. Tillman, 273 So. 3d 710, 2019 Miss. LEXIS 220 (Miss. 2019).

OPINIONS OF THE ATTORNEY GENERAL

Because the only express requirement in this section for a separate license is for "each capacity and place of business"; therefore, it does not specifically require an existing licensed motor vehicle dealer to obtain another dealer license to represent another manufacturer at the same location. Day, Apr. 29, 2004, A.G. Op. 04-0076.

A firm manufacturing and selling "specialty vehicles" to public agencies under the provisions of the state public purchasing laws is not required to obtain a Mississippi Motor Vehicle Dealer License. Mangum, Apr. 15, 2005, A.G. Op. 05-0163.

RESEARCH REFERENCES

ALR.

Construction and application of statute making it unlawful to tamper with motor vehicle odometer. 76 A.L.R.3d 981.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer – Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies. 66 A.L.R.6th 351.

Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer – Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute. 67 A.L.R.6th 209.

Liability of manufacturer under Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.) for failure to perform or comply with terms or provisions of franchise agreement. 54 A.L.R. Fed. 314.

Am. Jur.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Forms 81 (complaint in misrepresentation in sale of used automobile as new), 81.2 (complaint, petition, or declaration-misrepresentation in sale of used automobile as new automobile-fraudulent concealment of disconnection of odometer).

6 Am. Jur. Proof of Facts 3d, Act of God, §§ 1 et seq.

28 Am. Jur. Proof of Facts 3d 267, Proof of Wrongful Termination of Motor Vehicle Dealership.

§ 63-17-74. Sale of motor vehicle not titled and registered in name of seller prohibited; exceptions; penalty for violation.

(1) It is unlawful for a person to sell a motor vehicle that is not titled and registered in the name of that person unless the person is:

(a) An heir, successor or assignee of the owner of the motor vehicle;

(b) A motor vehicle dealer licensed or permitted in the State of Mississippi to sell motor vehicles;

(c) A person selling a motor vehicle to a licensed used motor vehicle parts dealer or scrap metal processor in compliance with Section 63-21-39.;

(d) A person selling a motor vehicle under the Mississippi Title Pledge Act;

(e) An insurance company or its authorized agent selling a motor vehicle that is the subject of an insurance claim;

(f) A finance company or bank selling a motor vehicle; or

(g) A wrecker service or automobile repair service/business selling a motor vehicle that is legally being held for sale as merchandise.

All local and state law enforcement agencies have jurisdiction to enforce this section.

(2) Any person who violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00) per violation.

HISTORY: Laws, 2013, ch. 522, § 1, eff from and after July 1, 2013; Laws, 2020, ch. 462, § 2, eff from and after passage (approved July 8, 2020).

Cross References — Mississippi Title Pledge Act, see §§ 75-67-401 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 63-17-75. Applications for licenses.

Within ninety (90) days after July 1, 1970, all persons who on July 1, 1970, are engaged in a business or occupation for which a license is required under the Mississippi Motor Vehicle Commission Law shall make application on forms prescribed by the commission for their respective licenses. All such persons shall be permitted, without a license, to continue to engage in the business or occupation for which a license is applied for until the license is either granted or, in case it is denied, until the applicant has exhausted or has had an opportunity to exhaust all of his remedies under Section 63-17-99. No person not engaged in a business or occupation requiring such a license on July 1, 1970, shall be permitted to engage in such business or occupation until he shall have first obtained a license to engage in such business or occupation.

Applications for licenses shall be verified by the oath or affirmation of the applicants and shall be on forms prescribed by the commission and furnished to such applicants. Applications shall contain such information as the commission deems necessary to enable it to fully determine the qualifications and eligibility of the several applicants to receive the license or licenses applied for. The commission shall require that there be set forth in each application information relating to the applicant's financial standing, the applicant's business integrity, whether the applicant has an established place of business and is primarily engaged in the pursuit, avocation or business for which a license or licenses is applied for, and whether the applicant is able to properly conduct the business for which a license or licenses is applied for, and such other pertinent information consistent with the safeguarding of the public interest and public welfare. Applications for license as a motor vehicle dealer shall, in addition to the foregoing, be accompanied by the filing with the commission of a bona fide contract or franchise then in effect between the applicant and a manufacturer, distributor or wholesaler of the new motor vehicle or vehicles proposed to be dealt in, unless such contract or franchise has already been filed with the commission in connection with a previous application made by such applicant, in which event the applicant shall, in lieu of again filing the contract or franchise, identify the contract or franchise by appropriate reference and file all revisions and additions, if any, which have been made to said contract or franchise. The applicant must furnish satisfactory evidence that he or it maintains adequate space in the building or structure wherein his or its established business is conducted for the display of new motor vehicles, or he will have such facilities within a reasonable time after receiving a license, and that he or it has or will have adequate facilities in said building or structure for the repair and servicing of motor vehicles and the storage of new parts and accessories for same. However, the failure to furnish the evidence called for in the preceding sentence shall not constitute sufficient cause for denying a license to any motor vehicle dealer who on July 1, 1970, was an enfranchised new motor vehicle dealer in this state of a manufacturer, distributor or wholesaler of new motor vehicles and who continued to be such a dealer from such date until application was made for a license as a motor vehicle dealer.

New applications for licenses as a new, used or wholesale motor vehicle dealer shall, in addition to the foregoing, be accompanied by the filing with the commission of a corporate surety bond in the penal sum of Twenty-five Thousand Dollars ($25,000.00) on a bond form approved by the commission. However, an applicant for licenses at multiple locations may choose to provide a corporate surety bond in the penal sum of One Hundred Thousand Dollars ($100,000.00) covering all licensed locations of the same capacity in lieu of separate bonds for each location.

The bond shall be in effect upon the applicant being licensed and shall be conditioned upon his complying with the provisions of the Mississippi Motor Vehicle Commission Law. The bond shall be an indemnity for any loss sustained by any person by reason of the acts of the person bonded when those acts constitute grounds for the suspension or revocation of license. The bond shall be executed in the name of the State of Mississippi for the benefit of any aggrieved party. The aggregate liability of the surety for any claimants, regardless of the number of years this bond is in force or has been in effect, shall not exceed the amount of the bond. The proceeds of the bond shall be paid upon receipt by the commission of a final judgment from a Mississippi court of competent jurisdiction against the principal and in favor of an aggrieved party.

New, used and wholesale motor vehicle dealers shall be required to maintain motor vehicle liability insurance providing blanket coverage on vehicles operated on the public streets and highways of this state, including vehicles in dealership inventory unless the motor vehicle dealer's inventory does not have a motor. Evidence of liability insurance for business and inventory vehicles shall be filed with the application for license, and the application for license shall be denied if proof of liability insurance satisfactory to the Department of Revenue is not provided.

HISTORY: Codes, 1942, § 8071.7-05; Laws, 1970, ch. 478 § 5; reenacted without change, Laws, 1983, ch. 344, § 13; reenacted without change, Laws, 1991, ch. 305, § 13; Laws, 2000, ch. 418, § 10; Laws, 2015, ch. 400, § 3, eff from and after July 1, 2015; Laws, 2019, ch. 325, § 1, eff from and after July 1, 2019.

Cross References — Denial, revocation, or suspension of a license, see § 63-17-85.

Filing and approval of dealer contracts generally, see § 63-17-131.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 163.

CJS.
60 C.J.S., Motor Vehicles § 186.

§ 63-17-76. Application for used motor vehicle dealer's license to be accompanied by documentation of completion of education seminar; conduct of seminars; approval of seminars by State Tax Commission.

(1) Every application for the issuance of a used motor vehicle dealer's license shall be accompanied by such evidence as the State Tax Commission shall prescribe, documenting the completion of an education seminar conducted by the Mississippi Independent Auto Dealers Association during the twelve-month period immediately preceding the date of application. Completion of an eight-hour licensing seminar conducted by the Mississippi Independent Auto Dealers Association shall be required for an initial license. All seminars must be approved by the State Tax Commission. The education requirements of this section shall not apply to:

(a) Used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers;

(b) A manufactured home dealer; or

(c) A franchised new car dealer licensed under the Mississippi Motor Vehicle Commission Law or any employee of such a dealer.

(2) The Mississippi Independent Auto Dealers Association shall submit to the State Tax Commission a complete and specific description of the seminars it conducts pursuant to this section, a description of how the seminar will benefit licensees in conducting their businesses, the number of hours involved, a description of the method which will be used to ensure attendance, and copies of any instructional materials which will be provided to attendees. At the time approval is granted, the State Tax Commission shall determine how many hours of education may be received by attending the program.

HISTORY: Laws, 2007, ch. 431, § 1, eff from and after July 1, 2007.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Specific duties and powers of the State Tax Commission, see § 27-3-31.

§ 63-17-77. License fees; expiration dates.

All applications for license or licenses shall be accompanied by the appropriate fee or fees therefor in accordance with the schedule thereof hereinafter set out. In the event any application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

The schedule of license fees to be charged and received by the commission for the licenses issued shall be as follows:

(1) For each manufacturer, distributor, wholesaler, factory branch and division or distributor branch and division, and wholesaler branch and division, four hundred dollars ($400.00).

(2) For each motor vehicle dealer, factory representative, distributor representative and wholesaler representative, one hundred dollars ($100.00).

(3) For each motor vehicle salesman, ten dollars ($10.00).

Any person, firm or corporation required to be licensed, who fails to make application for such license at the time required, shall, in addition to the aforesaid fees, pay interest at the rate of six percent (6%) per annum for the period of time during which he shall operate without a proper license, and in addition thereto, shall pay a penalty of fifty percent (50%) of the amount of the license fee. Said penalty, however, may be waived in whole or in part within the discretion of the commission.

All licenses shall expire on the thirty-first day of December following the date of issue.

HISTORY: Codes, 1942, § 8071.7-05; Laws, 1970, ch. 478, § 5; Laws, 1982, ch. 326; reenacted, Laws, 1983, ch. 344, § 14; reenacted without change, Laws, 1991, ch. 305, § 14, eff from and after July 1, 1991.

Cross References — Denial of an application, or revocation or suspension of a license for commission of a prohibited act or failure to perform requirements of this section, see § 63-17-85.

§ 63-17-79. Specification of location of business; effect of change of location.

The license issued to each motor vehicle dealer, manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, or wholesaler branch or division, shall specify the location of the factory, office, branch or division thereof. In case such location is changed, the commission shall endorse the change of location on the license without charge if it be within the same county. A change of location to another county shall require a new license.

HISTORY: Codes, 1942, § 8071.7-05; Laws, 1970, ch. 478, § 5; reenacted without change, Laws, 1983, ch. 344, § 15; Laws, 1991, ch. 305, § 15, eff from and after July 1, 1991.

Cross References — Denial of an application, or revocation or suspension of a license for commission of a prohibited act or failure to perform requirements of this section, see § 63-17-85.

§ 63-17-80. Motor vehicle lessors required to be licensed.

It is unlawful for a motor vehicle lessor or any agent, employee or representative thereof: (a) to represent and to offer for lease any new motor vehicle in Mississippi without first obtaining a new motor vehicle dealer license, or (b) to lease or offer to lease a new motor vehicle from an unlicensed location.

HISTORY: Laws, 2000, ch. 418, § 1, eff from and after July 1, 2000.

§ 63-17-81. License of salesman.

Every motor vehicle salesman shall have his license upon his person, or displayed at his place of employment, except as hereinafter provided, when engaged in his business, and shall display the same upon request. The name and business address of the employer of such salesman shall be stated on the license.

In case of a change of employer the following procedure shall be adhered to:

(a) The licensee shall within three (3) days following such change mail or deliver his license to the commission for its endorsement of such change thereon. The license shall be accompanied by a fee of Two Dollars and Fifty Cents ($2.50) for endorsing each such change of employer and a written statement of the licensee setting forth the name and business address of his new employer, the date his employment terminated with his last employer, and the date his employment commenced with his new employer.

(b) The last employer of the licensee shall, within three (3) days following the termination of employment of the licensee, make a report to the commission setting forth the reason or reasons why the services of the licensee were terminated and such other information as may be required by the commission.

(c) Upon receipt by the commission of the licensee's license and fee and his last employer's report, the commission shall immediately make an appropriate endorsement on said license showing the change of employer and mail the license, as endorsed, to the licensee unless the commission has grounds to believe and does believe that the licensee is no longer qualified under the provisions of the Mississippi Motor Vehicle Commission Law as a motor vehicle salesman. Under such circumstances the commission shall immediately notify him and his new employer in writing that a hearing will be held for the purpose of determining whether his license should be revoked or suspended, specifying the grounds for revocation or suspension, as the case may be, and the time and place for the hearing. Such hearing and any and all appeals by the licensee with respect thereto shall be in accordance with the provisions of Sections 63-17-89 through 63-17-99.

(d) If, after the commission receives the licensee's license and fee and his last employer's report, the executive director of the commission cannot for any reason endorse and mail to the licensee his license within a period of three (3) days following the receipt by the commission of the licensee's license and fee and his last employer's report, then and in that event he shall mail to the licensee a permit in such form as the commission shall prescribe, which permit shall serve in lieu of a license until such time as the commission endorses and mails the license to the licensee or until such time as the licensee's license is revoked or suspended in accordance with the provisions of the Mississippi Motor Vehicle Commission Law. If the license is ultimately revoked or suspended then immediately upon such revocation or suspension the licensee shall return said permit to the commission for cancellation.

(e) The commission shall maintain a permanent file with respect to each licensed motor vehicle salesman. Each such file shall contain all pertinent information with respect to the fitness and qualifications of each such licensee for the use by the commission in from time to time determining whether his license should be revoked or suspended.

There is no intent under the Mississippi Motor Vehicle Commission Law to prevent a salesman who has not previously been licensed or a transferee salesman from selling during the time required to process his application. Such applicant shall be allowed to sell from the date of employment as long as he and his dealer follow the procedure for license application.

HISTORY: Codes, 1942, § 8071.7-05; Laws, 1970, ch. 478, § 5; reenacted without change, Laws, 1983, ch. 344, § 16; reenacted without change, Laws, 1991, ch. 305, § 16; Laws, 1994, ch. 399, § 8, eff from and after July 1, 1994.

Cross References — Denial of an application, or revocation or suspension of a license for commission of a prohibited act or failure to perform requirements of this section, see § 63-17-85.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 163.

CJS.
60 C.J.S., Motor Vehicles § 186.

§ 63-17-83. License of factory representative or distributor representative.

Every motor vehicle factory representative or distributor representative shall have his license upon his person when engaged in his business, and shall display the same upon request. The name of the employer of such factory representative or distributor representative shall be stated on said license. In case of a change of employer, the holder of such license shall immediately mail same to the commission for its endorsement of such change thereon. A fee of two dollars and fifty cents ($2.50) shall be charged by the commission for endorsing each such change of employer on said licenses, and said fee shall accompany the application for change.

HISTORY: Codes, 1942, § 8071.7-05; Laws, 1970, ch. 478, § 5; reenacted

without change, Laws, 1983, ch. 344, § 17; reenacted without change, Laws, 1991, ch. 305, § 17, eff from and after July 1, 1991.

Cross References — Denial of an application, or revocation or suspension of a license for commission of a prohibited act or failure to perform requirements of this section, see § 63-17-85.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 163.

CJS.

60 C.J.S., Motor Vehicles § 186.

§ 63-17-85. Grounds for denial, revocation, or suspension of license; assessment of civil penalty in lieu of suspension of license; collection and disposition of penalty.

The commission may deny an application for a license, or revoke or suspend a license after it has been granted, for any of the following reasons:

(a) On satisfactory proof of unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in the Mississippi Motor Vehicle Commission Law.

(b) For fraud practiced or any material misstatement made by an applicant in any application for license under the provisions of Section 63-17-75.

(c) For any willful failure to comply with any provision of said law or with any rule or regulation promulgated by the commission under authority vested in it by said law.

(d) Change of condition after license is granted or failure to maintain the qualifications for license.

(e) Continued or flagrant violation of any of the provisions of said law or of any of the rules or regulations of the commission.

(f) For any willful violation of any law relating to the sale, distribution or financing of motor vehicles.

(g) Willfully defrauding any retail buyer to the buyer's damage.

(h) Willful failure to perform any written agreement with any retail buyer.

(i) Being a manufacturer who fails to specify to its motor vehicle dealers the pre-delivery preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers, including a schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with such pre-delivery and preparation obligations and shall constitute any such dealer's only responsibility for product liability as between such dealer and such manufacturer. The compensation as set forth on said schedule shall be reasonable and the reasonableness thereof shall be subject to the determination by the commission as to reasonableness in the event a dealer files a verified complaint with the commission challenging the reasonableness of the pre-delivery preparation obligations or compensation. Any mechanical, body or parts defects arising from any express or implied warranties of any such manufacturer shall constitute such manufacturer's product or warranty liability.

(j) On satisfactory proof that any manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division has unfairly and without due regard to the equities of the parties or to the detriment of the public welfare failed to properly fulfill any warranty agreement or to adequately and fairly compensate any of its motor vehicle dealers for labor and parts incurred by any such dealer with regard to warranty work performed by any such dealer, and upon the written request of a dealer using a format provided by the manufacturer, which is consistent with the requirements of Section 63-17-86. In no event shall any such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division pay to the requesting motor vehicle dealer an hourly labor rate and parts mark-up for warranty work that is less than that charged by such dealer to its retail customers in accordance with Section 63-17-86. Time allowances for the diagnosis and performance of warranty work shall be reasonable and adequate for such work to be performed using the actual time required by a qualified technician of ordinary skill to perform such work. No such dealer shall charge to its manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, a labor rate in excess of the rate charged to its retail customers. All claims made by motor vehicle dealers hereunder for such labor and/or parts shall be paid within thirty (30) days following their approval. All such claims shall be either approved or disapproved within thirty (30) days after their receipt, and when any such claim is disapproved the motor vehicle dealer who submits it shall be notified in writing of its disapproval within said period, and each such notice shall state the specific grounds upon which the disapproval is based.

(k) For the commission of any act prohibited by Sections 63-17-73 through 63-17-86 or the failure to perform any of the requirements of said sections.

If the commission finds, after notice and hearing in the manner provided for under the Mississippi Motor Vehicle Commission Law, that there is sufficient cause upon which to base the revocation of the license of any licensee involved in the hearing, the commission may in lieu of revoking such license assess a civil penalty against the guilty licensee not to exceed Ten Thousand Dollars ($10,000.00). If the commission finds, after such notice and hearing, that sufficient cause exists for the suspension only of the license of any licensee, the commission may in lieu of suspending such license assess a civil penalty against the guilty licensee of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) per day for each day such license would otherwise be suspended. However, the amount of such penalty shall not exceed an aggregate of Seven Thousand Five Hundred Dollars ($7,500.00).

Failure of the licensee to pay all penalties so assessed within the time allowed by the commission for the payment thereof, which time shall in no case exceed ninety (90) days from the date of the commission's order making such assessment, shall, unless an appeal is taken and perfected within the time and in the manner provided by the Mississippi Motor Vehicle Commission Law, result in an automatic revocation of such licensee's license. Any such penalties assessed by the commission remaining unpaid at the expiration of the time for payment may be recovered by an action in the name of the commission. All such actions shall be brought by the Attorney General of the State of Mississippi upon the written request of the commission to do so, and shall be brought in the chancery court of the county or the chancery court of the judicial district of the county to which the commission's order making such assessment is appealable under the provisions of Section 63-17-99. All civil penalties assessed and collected by the commission under the authority of this subsection shall be deposited in the General Fund of the State Treasury.

HISTORY: Codes 1942, § 8071.7-06; Laws, 1970, ch. 478, § 6; Laws, 1977, ch. 411, § 2; reenacted, Laws, 1983, ch. 344, § 18; reenacted without change, Laws, 1991, ch. 305, § 18, eff from and after July 1, 1991; Laws, 2021, ch. 315, § 2, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of paragraph (i). The word "retain" was changed to "retail" so that "delivery of new motor vehicles to retain buyers" now reads as "delivery of new motor vehicles to retail buyers." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Amendment Notes — The 2021 amendment, in (i), combined the former first and second sentences into the present first sentence by substituting "retail buyers, including a schedule" for "retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule" and therein deleted "for the protection of the buying public" following "manufacturer who," substituted " specify to its motor vehicle dealers the pre-delivery preparation" for "specify the delivery and preparation" and substituted "pre-delivery and preparation obligations and shall constitute" for "delivery and preparation obligations shall be filed with the commission by every licensed motor vehicle manufacturer and shall constitute," and in the second sentence, substituted "determination by the commission…obligations or compensation" for "approval of the commission" at the end; in (j), in the first sentence, substituted "labor and parts incurred by any such dealer with regard to warranty work performed by any such dealer" for labor, parts and/or incidental expenses incurred by any such dealer with regard to factory warranty agreements performed by any such dealer" and added "and upon the written…Section 63-17-86" at the end, in the second sentence, substituted "pay to the requesting motor vehicle dealer an hourly labor rate and parts mark-up for warranty work that is less than that charged by such dealer" for "pay to any of its motor vehicle dealers a labor rate per hour for warranty work less than that charged by any such dealer" and added "in accordance with Section 63-17-86" at the end, added the third sentence, in the fourth sentence, deleted "per hour" following "a labor rate," and in the fifth sentence, substituted "such labor and/or parts shall" for "such labor, parts and/or incidental expenses shall"; and in (k), substituted "through 63-17-86" for "through 63-17-83."

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

Products liability: Manufacturer's post-sale obligation to modify, repair, or recall product. 47 A.L.R.5th 395.

Causes of action governed by limitations period in UCC § 2-725. 49 A.L.R.5th 1.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 164.

CJS.

60 C.J.S., Motor Vehicles § 186.

§ 63-17-86. Obligations of manufacturers, distributors and motor vehicle dealers; establishment of rate for parts and labor; rebuttal and protest.

(1) The mark-up customarily charged by the dealer for parts or its labor rate may be established at the election of the dealer by the dealer submitting to the manufacturer, either by electronic transmission or tangible delivery, and in accordance with Section 63-17-85(j), all consecutive repair orders that include one hundred (100) sequential repair orders reflecting qualified repairs, or all repair orders closed during any period of ninety (90) consecutive days, whichever produces the fewer number of repair orders, covering repairs made no more than one hundred eighty (180) days before the submission, and declaring the parts mark-up or labor rate.

(2) The dealer shall calculate its labor rate by determining the total charges for labor from the qualified repairs submitted and dividing that amount by the total number of hours that produced such charges. The dealer shall calculate its parts mark-up by determining the total charges for parts from the qualified repairs submitted, dividing that amount by its total cost of the purchase of such parts, subtracting one from that amount, and multiplying by one hundred (100) to produce a percentage.

(3) A motor vehicle dealer seeking to establish or modify its warranty reimbursement labor rate, parts mark-up, or both shall no more frequently than once per twelve-month period, submit to the manufacturer:

(a) A single set of repair orders for purposes of calculating both its labor rate and parts mark-up; or

(b) A set of repair orders for purposes of calculating only its labor rate or for purposes of calculating only its parts mark-up.

(4) In calculating the rate customarily charged by the dealer for parts and labor for purposes of this section, the following shall not be included:

(a) Repairs which are the subject of manufacturer discounts, such as special events, specials, promotions, coupons, or service campaigns.

(b) Parts sold at wholesale.

(c) Repairs of motor vehicles owned by the dealer.

(d) Routine maintenance, including, but not limited to, replacements of fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners, unless provided in the course of, and related to, an otherwise qualified repair.

(e) Installations of accessories.

(f) Replacements of or work on tires, wheels, or brakes, including alignments, wheel or tire rotations, or replacements of brake drums, rotors, shoes, or pads.

(g) Vehicle reconditioning.

(h) Safety or emission inspections required by law.

(i) Repairs for which volume discounts have been negotiated with government agencies or insurers.

(j) Bodyshop repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate act.

(k) Parts that do not have individual part numbers.

(*l*) Manufacturer approved and reimbursed goodwill repairs or reimbursements.

(m) Window replacement, window etching, window tint, protective film, or other masking products.

(5) The submitted parts mark-up or labor rate shall each be presumed to be reasonable, and shall go into effect forty-five (45) days after the manufacturer's receipt of its submission, unless, within such period, the manufacturer rebuts that presumption, by reasonably substantiating that such submission is materially incomplete, materially inaccurate or is materially unreasonable and providing a full explanation of any and all reasons that such submitted mark-up or rate is materially incomplete, materially inaccurate or materially unreasonable, evidence validating each such reason, a copy of all calculations used by it demonstrating any material inaccuracy, and a proposed adjusted mark-up or rate provided that the dealers submission is materially accurate, based upon the qualified repair orders submitted by the dealer. In such event, the manufacturer may not submit more than one (1) such rebuttal to the dealer, and may not thereafter add to, expand, supplement, or otherwise modify any element thereof, including, but not limited to, its grounds for contesting such parts mark-up or labor rate.

If a manufacturer determines from any set of repair orders submitted under this section that the labor rate or parts mark-up calculated under this section is substantially higher or lower than the rate currently on record with the manufacturer for labor and/or parts, the manufacturer may, in accordance with this subsection, request additional repair orders for a period of either sixty (60) days prior to or sixty (60) days subsequent to the time period for which the repair orders were submitted for purposes of an alteration, and shall have forty-five (45) days from receiving the additional repair orders to rebut the presumption that the dealer's proposed mark-up and labor rates are reasonable.

(6) If the dealer and the manufacturer do not agree on the parts mark-up or labor rate, as the case may be, then the dealer may file a protest with the commission within sixty (60) days of receiving the manufacturer's written rejection of the dealer's proposed parts mark-up or labor rate. If such a protest is filed, the commission shall inform the manufacturer thereof and that a

hearing will be held thereon. In any such hearing, the manufacturer shall have the burden of proving by a preponderance of the evidence that the dealer's submitted parts mark-up or labor rate or both was materially incomplete, materially inaccurate or was unreasonable as described in subsection (5). Upon a commission decision in favor of the dealer, any increase in the dealer's parts mark-up or labor rate arising from such proceeding shall be effective retroactively to the date forty-five (45) days following the manufacturer's receipt of the original submission to the manufacturer.

(7) If a manufacturer furnishes a part or component to a dealer, at reduced or no cost, to use in performing warranty work, the manufacturer shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer on the basis of the dealer's mark-up on the cost for the part or component as listed in the manufacturer's price schedule less the cost for the part or component.

(8) A manufacturer may not require a dealer to establish the rate customarily charged by the dealer for parts and labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide.

HISTORY: Laws, 2021, ch. 315, § 3, eff from and after July 1, 2021.

Joint Legislative Committee Note

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in this section by substituting "this section" for "this paragraph" in subsection (4), and by substituting "this section" for "this subsection and Section 63-17-86" in the undesignated paragraph following subsection (5). The Joint Committee ratified the correction at its August 20, 2021, meeting.

§ 63-17-87. Limited revocation or suspension of license.

The revocation or suspension of the license of a manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesaler branch or division may be limited to:

(a) One or more municipalities or counties.

(b) The sales area of any dealer whose franchise is unfairly cancelled or terminated within the purview of the Mississippi Motor Vehicle Commission Law, or whose franchise is not renewed in violation of the provisions of said law. However, where such a franchise is unfairly cancelled or terminated within the purview of said law or is not renewed in violation of the provisions of said law in a metropolitan area serviced by several motor vehicle dealers handling the same motor vehicles, the revocation or suspension shall not be applicable to the remaining motor vehicle dealers in such metropolitan area.

HISTORY: Codes, 1942, § 8071.7-06; Laws, 1970, ch. 478, § 6; reenacted

without change, Laws, 1983, ch. 344, § 19; reenacted without change, Laws, 1991, ch. 305, § 19, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR.
Who is "automobile manufacturer" for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq). 51 A.L.R. Fed. 812.

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 164.

CJS.
60 C.J.S., Motor Vehicles § 186.

§ 63-17-89. Hearings; prerequisite to denial, revocation or suspension of license.

The commission shall not:

1. Deny an application for a license without first giving the applicant a hearing, or an opportunity to be heard, on the question of whether he is qualified under the provisions of the Mississippi Motor Vehicle Commission Law to receive the license applied for.

2. Revoke or suspend a license without first giving the licensee a hearing, or an opportunity to be heard, on the question of whether there are sufficient grounds under the provisions of said law upon which to base such revocation or suspension.

HISTORY: Codes, 1942, § 8071.7-07; Laws, 1970, ch. 478, § 7; reenacted without change, Laws, 1983, ch. 344, § 20; reenacted without change, Laws, 1991, ch. 305, § 20, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am. Jur.
7A Am. Jur. 2d, Automobiles and Highway Traffic § 186.

CJS.
60 C.J.S., Motor Vehicles § 164.

§ 63-17-91. Hearings; calling of hearing.

(1) Any interested party shall have the right to have the commission call a hearing for the purpose of taking action in respect to any matter within the commission's jurisdiction by filing with the commission a verified complaint setting forth the grounds upon which the complaint is based.

(2) The commission may on its own motion call a hearing for the purpose of taking action in respect to any matter within its jurisdiction.

HISTORY: Codes, 1942, § 8071.7-07; Laws, 1970, ch. 478, § 7; reenacted without change, Laws, 1983, ch. 344, § 21; reenacted without change, Laws, 1991, ch. 305, § 21, eff from and after July 1, 1991.

§ 63-17-93. Hearings; notice; location; effect of failure to appear.

(1) When a hearing is to be held before the commission, the commission shall give written notice thereof to all parties whose rights may be affected thereby. The notice shall set forth the reason for the hearing and the questions or issues to be decided by the commission at such hearing and the time when and the place where the hearing will be held. All such notices shall be mailed to all parties whose rights may be affected by such hearing by registered or certified mail, and addressed to their last known address. Any such hearing shall be held in the county where the principal office of the commission is located.

(2) If any party who is notified of a hearing in accordance with the requirements of this section fails to appear at such hearing, either in person or by counsel, then and in that event the commission may make any decision and take any action it may deem necessary or appropriate with respect to any issue or question scheduled for hearing and decision by it at such hearing which affects or may affect the rights of such defaulting party.

HISTORY: Codes, 1942, § 8071.7-07; Laws, 1970, ch. 478, § 7; reenacted without change, Laws, 1983, ch. 344, § 22; reenacted without change, Laws, 1991, ch. 305, § 22; Laws, 1994, ch. 399, § 9, eff from and after July 1, 1994.

§ 63-17-95. Hearings; conduct; decisions.

(1) All parties whose rights may be affected at any hearing before the commission shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against them, and to produce evidence and witnesses in their own behalf. The commission shall make and keep a record of each such hearing and shall provide a transcript thereof to any interested party upon his request and at his expense. Testimony taken at all such hearings shall be taken either stenographically or by machine.

(2) Witnesses who testify at any hearing before the commission shall testify under oath. The form of the oath or affirmation shall be in the form or to the effect following: "You do solemnly swear (or affirm) that the evidence you shall give as a witness at this hearing shall be the truth, the whole truth, and nothing but the truth; so help you God."

(3) Any member of the commission may administer oaths or affirmations to witnesses testifying before the commission.

(4) The commission shall prescribe its rules of order or procedure in hearings or other proceedings before it. However, such rules of order or procedure shall not be in conflict or contrary to the provisions of law governing hearings before the commission, and appeals therefrom.

(5) All decisions of the commission with respect to the hearings shall be incorporated into orders of the commission and spread upon its minutes.

(6) The commission may apply to the chancery court of the county or to the chancery court of the judicial district of the county, or to any chancellor of

any such court in vacation, to which its order is appealable under the provisions of Section 63-17-99 for the enforcement of such order by injunction.

HISTORY: Codes, 1942, § 8071.7-07, Laws, 1970, ch. 478, § 7; Laws, 1977, ch. 411, § 3; reenacted, Laws, 1983, ch. 344, § 23; reenacted without change, Laws, 1991, ch. 305, § 23, eff from and after July 1, 1991.

JUDICIAL DECISIONS

1. Cross-examination.

Mississippi Motor Vehicle Commission did not improperly limit a competitor's right to cross-examine a witness in proceedings in which the competitor contested a manufacturer's approval of a dealer's relocation request because (1) only the witness's affidavit was admitted, (2) cross-examination was limited to the affidavit, and (3) the competitor chose not to conduct cross-examination. GM, LLC v. Ryan Motors, Inc., 271 So. 3d 563, 2018 Miss. App. LEXIS 565 (Miss. Ct. App. 2018).

§ 63-17-97. Execution and enforcement of summons, citation or subpoena.

It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the commission, when so directed by the commission, to execute any summons, citation or subpoena which the commission may cause to be issued and to make return thereof to the commission. The sheriffs and constables so serving and returning same shall be paid for so doing the fees provided for such services in the circuit court. Any person who appears before the commission or a duly designated employee thereof in response to a summons, citation or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court.

In case of failure or refusal on the part of any person to comply with any summons, citation or subpoena issued and served as above authorized or in the case of the refusal of any person to be sworn or affirmed as a witness, or testify or answer to any matter regarding which he may be lawfully interrogated as a witness, or the refusal of any person to produce his record books and accounts relating to any matter regarding which he may be lawfully interrogated as a witness, the chancery court of any county of the State of Mississippi, or any chancellor of any such court in vacation, may, on application of the commission or of the executive director thereof, issue an attachment for such person and compel him to comply with such summons, citation or subpoena and to attend before the commission or its designated employee and to produce the documents specified in any subpoena duces tecum and to be sworn or affirmed as a witness or to give his testimony upon such matters as he may be lawfully required. Any such chancery court, or any chancellor of any such court in vacation, shall have the power to punish for contempt as in case of disobedience of like process issued from or by any such chancery court, or as in case of refusal to be sworn or affirmed as a witness, or as in case of refusal to testify as a witness therein in response to such process, and such person shall be taxed with the costs of such proceedings.

HISTORY: Codes, 1942, § 8071.7-07; Laws, 1970, ch. 478, § 7; Laws, 1977, ch. 411, § 4; reenacted, Laws, 1983, ch. 344, § 24; reenacted without change, Laws, 1991, ch. 305, § 24, eff from and after July 1, 1991.

Cross References — Fees of sheriffs generally, see § 25-7-19.
Fees of constables generally, see § 25-7-27.
Witness fees and mileage allowance in circuit courts generally, see § 25-7-47.
Service of subpoena in criminal cases, see § 99-9-17.
Subpoenas, see Miss. Rule Civil Proc. 45.

§ 63-17-99. Appeals from decisions of commission; finality of decisions.

The following procedure shall govern in taking and perfecting appeals:

1. Any person who is a party to any hearing before the commission and who is aggrieved by any decision of the commission with respect to any hearing before it shall have the right of appeal to the chancery court of the county of such person's residence or principal place of business within this state; if such person is a nonresident of the state he shall have the right of appeal to the chancery court of the residence of the opposing party, and if the opposing party is also a nonresident, the appeal shall be to the Chancery Court of the First Judicial District of Hinds County, Mississippi. All such appeals shall be taken and perfected within sixty days from the date of the decision of the commission which is the subject of the appeal. The chancery court to which such appeal is taken may affirm such decision or reverse and remand the same to the commission for further proceedings as justice may require or dismiss such decision. All such appeals shall be taken and perfected, heard and determined, either in term time or in vacation, on the record, including a transcript of pleadings and evidence, both oral and documentary, heard and filed before the commission. In perfecting any such appeal, the provisions of law respecting notice to the reporter and allowance of bills of exceptions, now or hereafter in force, respecting appeals from the chancery court to the supreme court shall be applicable. The reporter shall transcribe his notes, taken stenographically or by machine, and file the record with the commission within thirty days after approval of the appeal bond, unless, on application of the reporter, or of the appellant, an additional fifteen days shall have been allowed by the commission to the reporter within which to transcribe his notes and file the transcript of the record with the commission.

2. Upon the filing with the commission of a petition of appeal to the proper chancery court, it shall be the duty of the commission, as promptly as possible, and in any event within sixty days after approval of the appeal bond, to file with the clerk of said Chancery Court to which the appeal is taken, a copy of the petition for appeal and of the decision appealed from, and the original and one copy of the transcript of the record of the proceedings and evidence before the commission. After the filing of said petition, the appeal shall be perfected by the filing of a bond in the penal sum of five hundred dollars ($500.00) with two sureties or with a surety company

qualified to do business in Mississippi as surety, conditioned to pay the costs of such appeal, said bond to be approved by any member of the commission or by its executive secretary or by the clerk of the chancery court to which such appeal is taken.

3. No decision of the commission made as a result of a hearing shall become final with respect to any party affected and aggrieved by such decision until such party shall have exhausted or shall have had an opportunity to exhaust all of his remedies. However, any such decision may be made final if the commission finds that failure to do so would be detrimental to the public interest or public welfare; however, the finality of any such decision shall not prevent any party or parties affected and aggrieved thereby to appeal the same in accordance with the appellate procedure set forth in this section.

HISTORY: Codes, 1942, § 8071.7-07; Laws, 1970, ch. 478, § 7; reenacted without change, Laws, 1983, ch. 344, § 25; reenacted without change, Laws, 1991, ch. 305, § 25, eff from and after July 1, 1991.

§ 63-17-101. Recovery of damages and attorney fees by licensee.

Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of the Mississippi Motor Vehicle Commission Law or with any rule or regulation promulgated by the commission under authority vested in it by said law may recover reasonable damages and attorney fees therefor in any court of competent jurisdiction.

HISTORY: Codes, 1942, § 8071.7-09; Laws, 1970, ch. 478, § 9; reenacted without change, Laws, 1983, ch. 344, § 26; reenacted without change, Laws, 1991, ch. 305, § 26, eff from and after July 1, 1991.

JUDICIAL DECISIONS

1. Attorney's fees.

In proceedings in which a competitor contested a manufacturer's approval of a dealer's relocation request, it was error to award the competitor attorney's fees because a trial court's decision in the competitor's favor was reversed. GM, LLC v. Ryan Motors, Inc., 271 So. 3d 563, 2018 Miss. App. LEXIS 565 (Miss. Ct. App. 2018).

RESEARCH REFERENCES

ALR.

Liability for representations and express warranties in connection with sale of used motor vehicle. 36 A.L.R.3d 125.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

§ 63-17-103. Restrictions on right to advertise motor vehicle as new; enforcement of restriction.

(1) Nothing in the Mississippi Motor Vehicle Commission Law shall be

construed to prohibit the sale of a new motor vehicle by any person who is not required to be licensed under said law. However, only a motor vehicle dealer as defined in Section 63-17-55 shall have the right to advertise or represent, publicly or otherwise, that a motor vehicle is new in connection with its sale, exchange or other disposition. Any person who is not such a motor vehicle dealer and who advertises or represents that a motor vehicle is new in connection with its sale, exchange or other disposition shall be guilty of a misdemeanor and upon conviction shall be punished in the manner provided for by Section 63-17-105. However, nothing in this section shall apply to (a) any lease by a motor vehicle manufacturer operating a project as defined in Section 57-75-5(f)(iv)1 or Section 57-75-5(f)(xxi) of three (3) or fewer motor vehicles at any one time and related vehicle maintenance, of any line of vehicle produced by the manufacturer or its subsidiaries, to any one (1) employee of the motor vehicle manufacturer on a direct basis, or any sale or other disposition of such motor vehicles by the motor vehicle manufacturer at the end of a lease through direct sales to employees of the manufacturer or through an open auction or auction limited to dealers of the manufacturer's vehicle line or its subsidiaries' vehicle lines; or (b) any sale or other disposition by such a motor vehicle manufacturer of motor vehicles for which the manufacturer obtained distinguishing number tags under Section 27-19-309(8).

(2) Any person who violates the provisions of subsection (1) of this section may be enjoined from further violations of such provisions by writ of injunction issued out of a court of equity upon a bill filed in the name of the state by the Attorney General, or any district or county attorney whose duty requires him to prosecute criminal cases on behalf of the state, in the county where such violation occurred.

HISTORY: Codes, 1942, § 8071.7-10; Laws, 1970, ch. 478, § 10; Laws, 1977, ch. 411, § 5; reenacted, Laws, 1983, ch. 344, § 27; reenacted without change, Laws, 1991, ch. 305, § 27; Laws, 2000, 3rd Ex Sess, ch. 1, § 21; Laws, 2007, ch. 303, § 10, eff from and after passage (approved Mar. 2, 2007).

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 81 (complaint in misrepresentation in sale of used vehicle as new).

§ 63-17-105. Penalties.

Every person committing a willful violation of any provision of subsection (1) of Section 63-17-73 or of Section 63-17-103 or subsection (3) of Section 63-17-73 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

HISTORY: Codes, 1942, § 8071.7-08; Laws, 1970, ch. 478, § 8; reenacted without change, Laws, 1983, ch. 344, § 28; reenacted without change, Laws, 1991, ch. 305, § 28; Laws, 1994, ch. 399, § 4, eff from and after July 1, 1994.

Cross References — Applicability of this section against a person who is not a motor vehicle dealer and who advertises or represents that a motor vehicle is new, see § 63-17-103.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

§ 63-17-107. Repealed.

Repealed by Laws, 1991, ch. 305 § 29, eff from and after July 1, 1991.

§ 63-17-107. [Laws, 1979, ch. 301, § 34; ch. 357, § 2; Laws, 1983, ch. 344, § 29]

Editor's Notes — Former § 63-17-107 was provided for the repeal of §§ 63-17-51 through 63-17-105.

§ 63-17-109. Right of first refusal.

(1) In the event of a proposed sale or transfer of a dealership and the franchise agreement for the dealership contains a right of first refusal in favor of the manufacturer or distributor, notwithstanding the terms of the franchise agreement, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the dealership only if all of the following requirements are met:

(a) The manufacturer or distributor sends by certified mail, return receipt requested, or any other reliable means of communication, notice of its intent to exercise its right of first refusal within sixty (60) days of receipt of the executed contract for the proposed sale or transfer and completed application and related documents reasonably requested by the manufacturer or distributor. The manufacturer or distributor shall provide the application and notice of other requirements within fifteen (15) days of request. In no event shall the manufacturer or distributor exercise its right of first refusal more than one hundred twenty (120) days after receipt of the executed contract. The manufacturer or distributor and the applicant shall act in good faith to provide the required information in a timely and expeditious manner.

(b) The exercise of the right of first refusal will result in the motor vehicle dealer receiving consideration, terms and conditions that are either the same as or greater than that for which such dealer has contracted for in connection with the proposed transaction.

(2) The manufacturer's or distributor's right of first refusal shall not apply to a transaction involving one (1) of the following:

(a) A designated family member or members, including the spouse, child or grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer-operator, or one or more motor vehicle dealer owners;

(b) A manager employed by the motor vehicle dealer in the dealership during the previous five (5) years that is otherwise qualified as a dealer-operator;

(c) A partnership or corporation controlled by any of the family members of the dealer-operator;

(d) A trust arrangement established or to be established for the purpose of allowing the new motor vehicle dealer to continue to qualify as such pursuant to the manufacturer's or distributor's standards, or provides for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer-operator or its principal owner or owners.

(3)(a) The manufacturer or distributor shall pay the reasonable expenses, including attorneys' fees which do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed owner prior to the exercise of the right of first refusal in negotiating and implementing the contract for the proposed sale of the dealership. The expenses and attorneys' fees shall be paid to the proposed new owner at the time of the closing of the sale at which the manufacturer or distributor exercises its right of first refusal.

(b) No payment of expenses and attorneys' fees shall be required if the person claiming reimbursement has not submitted or caused to be submitted an accounting of those expenses within thirty (30) days after the receipt of the manufacturer's or distributor's written request for the accounting. A manufacturer or distributor may request the accounting before exercising its right of first refusal.

(4) If the selling dealer discloses the manufacturer's right of first refusal to the proposed owner in writing, the motor vehicle dealer shall not have any liability to any person as a result of a manufacturer or distributor exercising its right of first refusal and the manufacturer or distributor shall assume the defense of the selling motor vehicle dealer for any claims by the proposed owner arising from the exercise of the right of first refusal.

(5) If the manufacturer or distributor does not exercise its right of first refusal within the time period set forth in subsection (1)(a), the manufacturer or distributor shall act upon the proposed sale of the franchise promptly and in good faith but in no event more than one hundred twenty (120) days after receipt of the completed application and related documents reasonably requested by the manufacturer or distributor.

HISTORY: Laws, 2000, ch. 418, § 2; Laws, 2006, ch. 432, § 5, eff from and after July 1, 2006.

§ 63-17-111. Owner of dealership may appoint successor by written agreement; manufacturer or dealer must honor succession unless good cause shown; procedure for refusing to honor succession.

(1) Notwithstanding the terms of any franchise agreement, any dealer-operator may appoint by will, or other written instrument, a designated successor to succeed in the ownership of the dealer-operator in the dealership upon the death or incapacity of the dealer-operator.

(2) Unless good cause exists for the refusal to honor the succession on the part of the manufacturer or distributor, any designated successor of a deceased

or incapacitated dealer-operator of a dealership may succeed to the ownership of the motor vehicle dealership under the existing franchise agreement if:

(a) The designated successor gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the motor vehicle dealership within sixty (60) days after the dealer-operator's death or incapacity; and

(b) The designated successor agrees to be bound by all the terms and conditions of the sales and service agreement.

(3) The manufacturer or distributor may request, and the designated successor shall provide promptly upon such request, personal and financial data reasonably necessary to determine whether the succession should be honored.

(4)(a) If the manufacturer or distributor believes that good cause exists for refusing to honor the succession of a deceased or incapacitated dealer, the manufacturer or distributor may, not more than sixty (60) days following receipt of the notice of the designated successor's intent to succeed and receipt of such personal and financial data, serve upon the designated successor notice of its refusal to honor the proposed succession and of its intent to terminate the existing franchise with the dealer-operator not earlier than six (6) months from the date such notice of refusal is served.

(b) Such notice shall state the specific grounds for the refusal to honor the succession.

(c) If such notice is not timely served upon the designated successor, the franchise agreement shall continue in effect subject to termination only as otherwise provided by the Mississippi Motor Vehicle Commission Law.

(5) In determining whether good cause for the refusal to honor the succession exists, the manufacturer or distributor has the burden of proving that the designated successor is not of good moral character or does not otherwise meet the manufacturer's or distributor's reasonable standards for a dealer-operator.

(6) If a manufacturer or distributor refuses to honor the succession to the ownership interest of a deceased or incapacitated dealer-operator for good cause, the manufacturer or distributor shall allow the designated successor a reasonable period of time, which shall not be less than six (6) months, in which to consummate the sale of the dealership.

(7) Changes in the ownership of a new motor home dealership shall be governed by the provisions of Sections 63-17-201 through 63-17-221.

HISTORY: Laws, 2000, ch. 418, § 3; Laws, 2014, ch. 532, § 13, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-113. Modification of franchise agreement; good cause required for termination, cancellation or nonrenewal.

(1) No person shall modify a franchise agreement during the term of such agreement or upon its renewal if the modification substantially and adversely affects the motor vehicle dealer's rights, obligations, investment, or return on investment without giving sixty (60) days' written notice of the proposed modification to the motor vehicle dealer and without showing good cause to the commission.

(2) Notwithstanding any agreement, the following alone shall not constitute good cause for the termination, cancellation or nonrenewal of a franchise agreement: The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of or holds a franchise agreement for the sale or service of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as the manufacturer or distributor prior to July 1, 2000, or is approved in writing by the manufacturer or distributor.

HISTORY: Laws, 2000, ch. 418, § 4, eff from and after July 1, 2000.

JUDICIAL DECISIONS

1. Notice.

It was not arbitrary or capricious for the Mississippi Motor Vehicle Commission to dismiss a competitor's contest of a manufacturer's approval of a dealer's relocation because (1) the competitor was not entitled to notice either statutorily or under the competitor's Dealer Sales and Service Agreement (SSA), as the competitor's SSA was not modified, and (2) the competitor only speculated that the competitor's Area of Primary Responsibility would change. GM, LLC v. Ryan Motors, Inc., 271 So. 3d 563, 2018 Miss. App. LEXIS 565 (Miss. Ct. App. 2018).

§ 63-17-115. Unreasonable discrimination prohibited.

A manufacturer or distributor of motor vehicles that directly or indirectly owns or operates a new motor vehicle dealership, in whole or in part, shall not unreasonably discriminate against any other motor vehicle dealer in the same line or make in any matter governed by the franchise agreement, including, but not limited to, the allocation or availability of:

(a) Motor vehicles;
(b) Other manufacturer or distributor products;
(c) Promotional or advertising allowances;
(d) The opportunity to perform warranty work; or
(e) The implementation of dealer programs or benefits.

HISTORY: Laws, 2000, ch. 418, § 5, eff from and after July 1, 2000.

§ 63-17-116. Relevant market areas established for new motor vehicle dealers in counties having certain populations; notice to same line-make motor vehicle dealer in relevant market area required; standing to object to additional franchise agreements; factors for determining good cause for additional new motor vehicle dealer.

(1) For purposes of this section, "relevant market area" means:

(a) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is greater than sixty thousand (60,000), the area within a radius of ten (10) miles of the intended site of the proposed or relocated dealer. The ten-mile distance shall be determined by measuring the distance between the nearest surveyed boundary of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business; or

(b) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is sixty thousand (60,000) or less, the area within radius of fifteen (15) miles of the intended site of the proposed or relocated dealer, or the county line, whichever is closer to the intended site. The fifteen-mile distance shall be determined by measuring the distance between the nearest surveyed boundary line of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

(2) As used in this section, "relocate" and "relocation" shall not include the relocation of a new motor vehicle dealer within two (2) miles of its established place of business.

(3) Before a franchisor enters into a franchise establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the franchisor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intent to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(4) Within sixty (60) days after receiving the notice provided for in subsection (3) of this section, or within sixty (60) days after the end of any appeal or alternative dispute resolution procedure provided by the franchisor, a new motor vehicle dealer may file a verified complaint before the Mississippi Motor Vehicle Commission pursuant to Section 63-17-91 to determine whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. The Mississippi Motor Vehicle Commission shall render a decision on the verified complaint within sixty (60) days of its filing. If the commission fails to render its decision within the sixty-day time period, either party may file an appeal pursuant to Section 63-17-99, and the court will

conduct a hearing and take evidence, both oral and documentary, in the place of the Mississippi Motor Vehicle Commission and shall render a decision utilizing the factors set forth in subsection (7).

(5) This section shall not apply to:

(a) The reopening or replacement in a relevant market area of a closed dealership that has been closed within the preceding two (2) years, if the established place of business of the reopened or replacement dealer is within two (2) miles of the established place of business of the closed dealership.

(b) The entering into of a renewal, replacement, or succeeding franchise agreement with an existing motor vehicle dealer whose operations will continue at the dealer's then current location; or

(c) The relocation of an existing or replacement dealer to a location within the existing or replacement dealer's own relevant market area if the proposed new location is not within a six-mile radius of any other same line-make motor vehicle dealer.

(6) Only a dealer into whose relevant market area the proposed new franchise or relocated dealer will be located shall have standing to object to the additional franchise agreement or relocation or to take any other action under this chapter with respect to the proposed appointment or relocation. Such a dealer may not protest the relocation of an existing dealer or the establishment of a replacement dealer if the proposed location is further away from the dealer than the relocating or replacement dealer's current or former location.

(7) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the Mississippi Motor Vehicle Commission shall take into consideration the existing circumstances including, but not limited to, the following:

(a) Permanency of the investment;

(b) Effect on the retail motor vehicle business and the consuming public in the relevant market area;

(c) Whether it is injurious or beneficial to the public welfare;

(d) Whether the new motor vehicle dealers of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel;

(e) Whether the establishment or relocation of the new motor vehicle dealer in the relevant market area would promote competition;

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area;

(g) Effect on the relocating dealer and the franchisor of a denial of the establishment of a new dealer in, or a relocation of a dealer into, the relevant market area; and

(h) Effect on the objecting dealer of the relocation or establishment of a new proposed franchise location.

HISTORY: Laws, 2006, ch. 432, § 1, eff from and after July 1, 2006.

Editor's Notes — Laws of 2006, ch. 432, § 7 provides as follows:

"SECTION 7. Section 1 of this act shall be codified in Chapter 17 of Title 63, Mississippi Code of 1972."

§ 63-17-117. Warranty or sales incentive audits to be conducted within certain amount of time after payment of disputed claim or end of incentive or rebate program; approved and paid claims not to be charged back to dealer absent fraud, improper repair, or failure to substantiate claim.

(1) Notwithstanding the terms of any franchise agreement, warranty and sales incentive audits of a motor vehicle dealer's records may be conducted by the manufacturer or distributor. Any audit for warranty parts or service compensation shall be performed within the twelve-month period immediately following the date of the payment of the disputed claim by the manufacturer or distributor. Any audit for sales incentives, service incentives, rebates or other forms of incentive compensation shall be performed within the twelve-month period immediately following the date of the payment of the disputed claim by the manufacturer or distributor or the end of the program during which the incentives, service incentives, rebates or other forms of incentives compensation were offered, whichever is later.

(2) No claim which has been approved and paid may be charged back to the motor vehicle dealer unless it can be shown by a preponderance of the evidence that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective conditions under generally accepted standards of workmanship, or that the motor vehicle dealer failed to reasonably substantiate the repair in accordance with the manufacturer's or distributor's reasonable written claim requirement.

(3) A manufacturer or distributor shall not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim processing requirement such as a clerical error or other administrative technicality that does not call into question the legitimacy of a claim. A motor vehicle dealer may submit an amended or supplemental claim within the time and manner required by the manufacturer for sales incentives, service incentives, rebates or other forms of incentives compensation for up to sixty (60) days from the date on which such a claim was submitted or could have been submitted.

(4) Limitations on warranty parts, service compensation, sales incentive audits, rebates or other forms of incentive compensation, chargebacks for warranty parts or service compensation, and service incentives and chargebacks for sales compensation only, shall not be effective in the case of intentionally false or fraudulent claims.

HISTORY: Laws, 2000, ch. 418, § 6; Laws, 2014, ch. 349, § 4, eff from and after July 1, 2014.

§ 63-17-118. Manufacturer or distributor to compensate motor vehicle dealer upon termination, cancellation or nonrenewal of franchise or discontinuation of motor vehicle line or make or parts essential to line or make.

(1) Upon any termination, cancellation, refusal to continue, or refusal to renew any franchise or any discontinuation of any line or make of motor vehicle or parts essential to such line or make, the manufacturer or distributor shall pay reasonable compensation to the motor vehicle dealer as follows:

(a)(i) The motor vehicle dealer's net cost for any new, unused, undamaged, unregistered, unmodified and unsold vehicle with a gross vehicle weight rating of sixteen thousand (16,000) pounds or less of the current and prior model year with less than seven hundred fifty (750) miles on the odometer that is in the motor vehicle dealer's inventory and was purchased from the manufacturer or another motor vehicle dealer of the same line or make in the ordinary course of business.

(ii) The motor vehicle dealer's net cost for any new, unused, undamaged, unregistered, unmodified and unsold vehicle with a gross vehicle weight rate of more than sixteen thousand (16,000) pounds of the current and prior model year that is in the motor vehicle dealer's inventory and was purchased from the manufacturer or another motor vehicle dealer of the same line or make in the ordinary course of business.

(iii) The manufacturer or distributor shall have no obligation to repurchase a motor vehicle if the motor vehicle has been modified to the extent that the modifications are so significant as to void the manufacturer's warranty or has been substantially altered to the prejudice of the manufacturer or distributor. The manufacturer or distributor shall have no obligation to repurchase any parts used to modify the motor vehicle that were not produced by or for the manufacturer or distributor.

(b) The motor vehicle dealer's net cost of each new, unused and undamaged part or accessory listed in the manufacturer or distributor's current parts catalog and in the original, resalable merchandising packages. In the case of sheet metal, a comparable substitute for the original package shall be sufficient. New or reconditioned core parts shall be valued at their core value, listed in the original vehicle manufacturer's or distributor's current parts catalog. If the part or accessory was purchased by the motor vehicle dealer from another authorized same line or make motor vehicle dealer in the ordinary course of business, the manufacturer shall purchase the part or accessory for the price in the current parts catalog. The motor vehicle dealer shall maintain accurate records regarding the actual purchase price of parts that the manufacturer or distributor is required to purchase under this paragraph.

(c) In addition to the costs referenced in paragraphs (a) and (b) of this subsection, the manufacturer shall pay the motor vehicle dealer an additional five percent (5%) charge based on the total compensation due under this section for handling, packing, storing and loading of any parts subject to repurchase pursuant to this section and the manufacturer shall pay for shipping the vehicles subject to repurchase from the location of the motor vehicle dealer to the location directed by the manufacturer.

(d) The manufacturer shall pay the motor vehicle dealer the amounts specified in this subsection within ninety (90) days after the tender of the property, subject to the motor vehicle dealer providing evidence of good and clear title upon return of property to the manufacturer. The manufacturer shall remove the property from the motor vehicle dealer's premises within one hundred eighty (180) days after the tender of the property.

(2) In the event a manufacturer or distributor cancels, refuses to continue, or refuses to renew any franchise or discontinues any line or make or parts essential to such line or make, in addition to the compensation provided in subsection (1) of this section, the manufacturer or distributor shall pay reasonable compensation to the motor vehicle dealer as follows:

(a) In the event a motor vehicle dealer leases the dealership facilities, then the manufacturer shall be liable for twelve (12) months payment of the gross rent or the remainder of the term of the lease, whichever is less. If the dealership facilities are not leased, then the manufacturer shall be liable for the equivalent of twelve (12) months payment of gross rent based upon the fair market value of the dealership facilities. The gross rent shall be paid only to the extent that the dealership premises are recognized in the franchise and only if they are used solely for performance in accordance with the franchise and not substantially in excess of those facilities recommended by the manufacturer or distributor. If the facility is used for the operations of more than one (1) franchise, the gross rent compensation shall only include the prorated value of the square footage used exclusively for the terminated franchise or line or make at the time of termination. This paragraph shall not apply to a termination, cancellation or nonrenewal due to a sale of the assets or stock of the motor vehicle dealership. In addition to the gross rent, the manufacturer is required to pay the dealer the net cost of any upgrades or other alterations made by the motor vehicle dealer to the dealership facilities which were required in writing by the manufacturer and made by the motor vehicle dealer within two (2) years prior to the effective date of termination. Nothing in this paragraph shall be construed to relieve a motor vehicle dealer of its obligation to mitigate damages upon termination, cancellation, or nonrenewal. As used in this paragraph "Gross rent" is the monthly rent plus the monthly cost of insurance and taxes.

(b) The manufacturer shall pay the motor vehicle dealer for the value of twelve (12) months of any outstanding amounts on any leases or the remaining amount of the lease, whichever is less, of computer hardware or software that is exclusively used to manage and report data of the terminated line or make to the manufacturer or distributor for financial reporting requirements.

(c) The manufacturer shall pay the motor vehicle dealer for the value of twelve (12) months or the remaining amount of the lease, whichever is less of any outstanding amounts on any manufacturer or distributor required equipment leases, service contracts, and sign leases.

(d) The fair market value of each undamaged sign owned by the motor vehicle dealer which bears a trademark or trade name used or claimed by the manufacturer if the sign was purchased from, or purchased at a requirement of, the manufacturer, plus the costs of installing the sign and the costs of purchasing and installing any pole upon which the sign is located. During the first three (3) years after its purchase, the fair market value of each sign shall be the motor vehicle dealer's net costs of purchasing the sign. Thereafter, the fair market value of the sign shall be the greater of its actual market value or its depreciated value on the books of the motor vehicle dealer.

(e) The fair market value of all tools, data processing programs and equipment and automotive service equipment owned by the motor vehicle dealer which are exclusively used for the line or make being terminated and which were required in writing and designated as equipment, tools, data processing programs and equipment, and automotive service equipment and purchased from, or purchased as a requirement of, the manufacturer if the equipment, tools, programs and equipment are in usable and good condition, except for reasonable wear and tear. During the first three (3) years after their purchase, the fair market value of each item of equipment, tools, programs, and equipment shall be the motor vehicle dealer's net cost associated with purchasing the items. Thereafter, the fair market value of each item shall be the greater of its actual market value or its depreciated value on the books of the motor vehicle dealer.

(f) In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon the manufacturer discontinuing the sale in this state of a line or make that was the subject of the franchise, then the manufacturer shall also be liable to the motor vehicle dealer for an amount at least equivalent to the fair market value of the motor vehicle dealer's franchise for the discontinued line or make as of:

(i) The date immediately preceding the date the manufacturer announces the action which results in termination, cancellation, or nonrenewal; or

(ii) The day twelve (12) months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher.

At the motor vehicle dealer's option, the manufacturer may avoid paying fair market value of the motor vehicle franchise to the motor vehicle dealer under this paragraph if the manufacturer, or another motor vehicle manufacturer pursuant to an agreement with the manufacturer, offers the motor vehicle dealer a replacement motor vehicle franchise with terms substantially similar to that offered to other same line or make motor vehicle dealers.

(g) The manufacturer shall pay the motor vehicle dealer the amounts specified in this subsection along with any other amounts that may be due to the motor vehicle dealer under the franchise agreement within ninety (90) days after the tender of the property, subject to the motor vehicle dealer providing evidence of good and clear title upon return of the property to the manufacturer. The manufacturer shall remove the property within one hundred eighty (180) days after the tender of the property from the motor vehicle dealer's premises. Unless previous arrangements have been made and agreed upon, the motor vehicle dealer is under no obligation to provide insurance for the property left after one hundred eighty (180) days.

(3) This section shall not apply to any sale, exchange, inheritance, gift or other transfer of ownership, stock, assets, management, or any other rights of the motor vehicle dealer, or to any termination for good cause, including, but not limited to, a conviction for a felony involving moral turpitude, for failure to conduct business for seven (7) consecutive business days or eight (8) business days out of any fifteen-day business period, for insolvency of the motor vehicle dealer or for loss of license to sell motor vehicles, or where there is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of a material significance to the franchise relationship provided that the dealer has been notified in writing of the failure.

(4) This section shall not apply to motor homes.

HISTORY: Laws, 2014, ch. 349, § 1, eff from and after July 1, 2014.

§ 63-17-119. Suit to recover damages; venue; requirement that dealer waive right to trial void.

(1) Notwithstanding any provision of a franchise agreement to the contrary, if any motor vehicle dealer or dealer-operator incurs pecuniary loss due to a violation of the Mississippi Motor Vehicle Commission Law by a manufacturer or distributor, the motor vehicle dealer or dealer-operator may bring suit in a court of competent jurisdiction and recover damages, together with costs, including reasonable attorneys' fees.

(2) Venue for any proceeding arising from the franchise agreement shall be in Mississippi and shall be consistent with Mississippi law. It is the public policy of this state that venue provided for in this section may not be modified by contract. Any provision contained in the franchise agreement that requires arbitration or litigation to be conducted outside the State of Mississippi shall be void and unenforceable.

(3) Notwithstanding any provision in a franchise agreement to the contrary, any requirement that a dealer waive its right to a trial by jury is void and unenforceable.

HISTORY: Laws, 2000, ch. 418, § 7; Laws, 2006, ch. 432, § 6, eff from and after July 1, 2006.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error appearing in § 7 of ch. 418, Laws, 2000. The Code section number "63-17-121" was changed to "63-17-119." The Joint Committee ratified the correction at its June 29, 2000 meeting.

DEALER CONTRACTS

Sec.
63-17-131. Filing and approval of dealer contracts.
63-17-133. Liquidation of damages for breach of contract by arbitration.
63-17-135. Maintenance of civil action for actual damages for breach of contract.
63-17-137. Applicability of provisions; penalties for violations.
63-17-139. Proof of damages.
63-17-141. Repealed.

§ 63-17-131. Filing and approval of dealer contracts.

Any person, partnership, association of persons or corporation engaged in the manufacture and/or distribution of motor vehicles, whether resident or nonresident of the State of Mississippi, transacting the business of manufacturing, distribution, or sale of motor vehicles or the parts or accessories thereof in the State of Mississippi, shall file in the Office of the Secretary of State the form of a contract which is to be entered into between such manufacturer with its agent, dealer or representative in this state. Upon the approval by the Attorney General of the contract, the contract shall become binding on all parties thereto. The failure to file the contract with the Secretary of State as provided herein and to secure the approval thereof of the Attorney General of the state, shall render the contract unenforceable. This section shall not apply to dealers or manufacturers of motor homes governed by the provisions of Sections 63-17-201 through 63-17-221.

HISTORY: Codes, 1942, § 8072; Laws, 1935, ch. 35; Laws, 2014, ch. 532, § 14, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

Cross References — Duty of attorney general to give opinion in writing upon any question of law relating to offices of various public officers, see § 7-5-25.

Motor Vehicle Commission Law, see §§ 63-17-51 to 63-17-119.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Foreign corporation doing business in state.

1. In general.
This section [Code 1942, § 8072] and Code 1942, § 1437 do not violate the due process clause of the Constitution of the United States. Jarrard Motors, Inc. v. Jackson Auto & Supply Co., 237 Miss. 660, 115 So. 2d 309, 1959 Miss. LEXIS 517 (Miss. 1959).

2. Foreign corporation doing business in state.
In determining whether a foreign corporation is doing business in the state within the meaning of this section [Code 1942, § 8072], each case must be decided upon its peculiar facts. Jarrard Motors, Inc. v. Jackson Auto & Supply Co., 237 Miss. 660, 115 So. 2d 309, 1959 Miss. LEXIS 517 (Miss. 1959).

A foreign corporation whose automobile distribution dealer contracts with Mississippi dealers give it almost absolute control over the dealers' manner of doing business, is doing business within the state within this section [Code 1942, § 8072]. Jarrard Motors, Inc. v. Jackson Auto & Supply Co., 237 Miss. 660, 115 So. 2d 309, 1959 Miss. LEXIS 517 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 A.L.R.3d 1173.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

§ 63-17-133. Liquidation of damages for breach of contract by arbitration.

In the event of a breach of the contract referred to in Section 63-17-131, the party injured or damaged by such breach may have recourse for the liquidation of his damages to a board of arbitration and award as provided in Chapter 15, Title 11, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 8072; Laws, 1935, ch. 35.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 8072] and Code 1942, § 1437 do not violate the due process clause of the Constitution of the United States. Jarrard Motors, Inc. v. Jackson Auto & Supply Co., 237 Miss. 660, 115 So. 2d 309, 1959 Miss. LEXIS 517 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 A.L.R.3d 1173.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

§ 63-17-135. Maintenance of civil action for actual damages for breach of contract.

Any person, partnership, association of persons, or corporation damaged by the breach of the contract referred to in Section 63-17-131, and desiring to take an appeal as provided by Chapter 15, Title 11, Mississippi Code of 1972, from the findings of the board of arbitration and award may in each instance of such injury or damage recover all actual damages sustained in addition to the penalties provided in Section 63-17-137 and may maintain its, or his, action against one or more of the parties to said contract, its officers or agents.

HISTORY: Codes, 1942, § 8073; Laws, 1935, ch. 35.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

Liability of manufacturer under § 2 of the Automobile Dealers Day in Court Act (15 USCS § 1222) for terminating or failing to renew franchise agreement upon dealer's violation of its terms. 50 A.L.R. Fed. 245.

§ 63-17-137. Applicability of provisions; penalties for violations.

Sections 63-17-131 through 63-17-137 shall not affect any contract existing as of October 2, 1935, between any person, partnership, association of persons or corporation acting as the agent, dealer or representative of any motor vehicle manufacturer, nor shall they affect the relationship of any parties now acting as the agent, dealer or representative of any manufacturer without contract in this state. If any motor vehicle manufacturer should, after said date, without good cause or without tendering reimbursement for the damage or injury sustained by its agent, dealer or representative, cancel the existing contract or should without good cause refuse to continue the business relationship existing between manufacturer and agent, dealer or representative without contract the dealer, agent or representative so injured by the loss of his or its dealership, agency or representation may sue and recover all actual damages sustained by him, it or them. For a violation of the provisions of Sections 63-17-131 through 63-17-139 a domestic corporation shall forfeit its charter and a foreign corporation shall forfeit its right to do business in this state and shall also forfeit not less than $500.00 nor more than $1,000.00 to the State of Mississippi and shall be proceeded against by the attorney general in the manner and form as provided for a quo warranto proceeding or injunction under the laws of this state.

HISTORY: Codes, 1942, § 8074; Laws, 1935, ch. 35.

Cross References — Injunctions generally, see §§ 11-13-1 et seq.
Quo warranto proceedings generally, see §§ 11-39-1 et seq.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

§ 63-17-139. Proof of damages.

In any action taken, proof by the party plaintiff that he has been compelled to discontinue the relationship of manufacturer, agent, dealer or representative on account of the unlawful act or breach of said contract by the party defendant or that the party defendant has threatened to cancel said contract without good cause and without first having submitted the question for an adjustment of a breach of said contract to a board of arbitration and award, shall be conclusive evidence of damage, and in every case proof of any unlawful purpose or agreement to violate the terms of said contract, shall entitle the party injured thereby to all actual damage sustained by him and shall in addition thereto subject the party violating said contract to the penalty provided in Section 63-17-137.

HISTORY: Codes, 1942, § 8075; Laws, 1935, ch. 35.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

Am. Jur.

28 Am. Jur. Proof of Facts 3d 267, Proof of Wrongful Termination of Motor Vehicle Dealership.

§ 63-17-141. Repealed.

Repealed by Laws, 2014, ch. 349, § 5, effective July 1, 2014.

§ 63-17-141. [Laws, 1994, ch. 399, § 1; Laws, 2010, ch. 395, § 1, eff from and after July 1, 2010.]

Editor's Notes — Former § 63-17-141 provided the duties of dealers and manufacturers of motor vehicles upon termination or renewal of franchise agreements.

MOTOR VEHICLE WARRANTY ENFORCEMENT ACT

Sec.	
63-17-151.	Short title.
63-17-153.	Legislative findings and declaration of purpose.
63-17-155.	Definitions.
63-17-157.	Repair of nonconforming vehicle.
63-17-159.	Replacement of vehicle or refund of purchase price where nonconformity cannot be corrected; affirmative defenses; presumption of reasonable attempts to conform vehicle to warranties; extension of warranties; notice requirements relating to repair of nonconformity; civil actions.
63-17-161.	Liability of consumer for bad faith claims.
63-17-163.	Necessity for resort to informal dispute settlement procedure.
63-17-165.	Remedies for violations.

§ 63-17-151. Short title.

Sections 63-17-151 et seq. shall be known and may be cited as the "Motor Vehicle Warranty Enforcement Act."

HISTORY: Laws, 1985, ch. 336, § 1, eff from and after July 1, 1985.

JUDICIAL DECISIONS

1. Relation to federal law.

Although the Mississippi Motor Vehicle Warranty Enforcement Act does share some characteristics with the Magnuson-Moss Warranty Act, when the statutes as a whole are compared to the Magnuson-Moss Act, the Mississippi Uniform Commercial Code (UCC) is most analogous. Therefore, a trial court erred by finding that the claims filed by two vehicle purchasers were barred by the statute of limitations because a six-year limitations period under the UCC applied. Broome v. GM, LLC, 145 So. 3d 645, 2014 Miss. LEXIS 408 (Miss. 2014).

RESEARCH REFERENCES

ALR.

Validity of disclaimer of warranty clauses in sale of new automobile. 54 A.L.R.3d 1217.

Automobile repairman's duty to provide customer with information, estimates, or replaced parts, under automobile repair consumer protection act. 25 A.L.R.4th 506.

Validity, construction, and effect of state motor vehicle warranty legislation (lemon law). 51 A.L.R.4th 872.

Liability under state law for injuries resulting from defective automobile seatbelt, shoulder harness, or restraint system. 48 A.L.R.5th 1.

Award of attorney fees under state motor vehicle warranty legislation (lemon laws). 82 A.L.R.5th 501.

Validity, construction and effect of state motor vehicle warranty legislation. 88 A.L.R.5th 301.

Am. Jur.

67A Am. Jur. 2d, Sales §§ 625 et seq.

39 Am. Jur. Trials, Automobile Warranty Litigation, §§ 1 et seq.

31 Am. Jur. Proof of Facts 2d 639, Dealer's Liability for Defective Used Car.

11 Am. Jur. Proof of Facts 3d 343, "Lemon Law" Litigation – Existence of Substantial Defect.

CJS.

60 C.J.S., Motor Vehicles §§ 472-491.

Law Reviews.

1987 Mississippi Supreme Court Review, Corporate, contract and commercial law. 57 Miss. L.J. 467, August, 1987.

Practice References.

McDonnell and Coleman, Commercial and Consumer Warranties – Drafting, Performing and Litigating (Matthew Bender).

§ 63-17-153. Legislative findings and declaration of purpose.

The Legislature recognizes that a motor vehicle is a major consumer purchase and that a defective motor vehicle creates a hardship for the consumer. The Legislature further recognizes that a duly franchised motor vehicle dealer is an agent of the manufacturer. It is the intent of the Legislature that a good faith motor vehicle warranty complaint by a consumer should be resolved by the manufacturer, or its agent, within a specified period of time. It is further the intent of the Legislature to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty issued by the manufacturer. However, nothing in Section 63-17-151 et seq. shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

HISTORY: Laws, 1985, ch. 336, § 2, eff from and after July 1, 1985.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the last sentence. The reference to "Sections 63-17-153 et seq." was changed to "Sections 63-17-151 et seq." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the last sentence by substituting "Section 63-17-151 et seq." for "Sections 63-17-151 et seq." The Joint Committee ratified the correction at its August 10, 2022, meeting.

§ 63-17-155. Definitions.

As used in Sections 63-17-151 through 63-17-165, the following terms shall have the following meanings:

(a) "Collateral charges" means those additional charges to a consumer which are not directly attributable to the manufacturer's suggested retail price label for the motor vehicle. Collateral charges shall include, but not be limited to, dealer preparation charges, undercoating charges, transportation charges, towing charges, replacement car rental costs and title charges.

(b) "Comparable motor vehicle" means an identical or reasonably equivalent motor vehicle.

(c) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, primarily used for personal, family, or household purposes, and any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(d) "Express warranty" means any written affirmation of fact or promise made in connection with the sale of a motor vehicle by a supplier to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time. For the purposes of Section 63-17-151 et seq., express warranties do not include implied warranties.

(e) "Manufacturer" means a manufacturer or distributor as defined in Section 63-17-55.

(f) "Motor vehicle" means a vehicle propelled by power other than muscular power which is sold in this state, is operated over the public streets and highways of this state and is used as a means of transporting persons or property, but shall not include vehicles run only upon tracks, off-road vehicles, motorcycles, mopeds, electric bicycles, personal delivery devices, electric personal assistive mobility devices as defined in Section 63-3-103, or golf carts or low-speed vehicles as defined in Section 63-32-1, or parts and components of a motor home which were added on and/or assembled by the manufacturer of the motor home. "Motor vehicle" shall include demonstrators or lease-purchase vehicles as long as a manufacturer's warranty was issued as a condition of sale.

(g) "Purchase price" means the price which the consumer paid to the manufacturer to purchase the motor vehicle in a cash sale or, if the motor vehicle is purchased in a retail installment transaction, the cash sale price as defined in Section 63-19-3.

HISTORY: Laws, 1985, ch. 336, § 3; Laws, 2003, ch. 485, § 12, eff from and after July 1, 2003; Laws, 2021, ch. 355, § 9, eff from and after July 1, 2021; Laws, 2021, ch. 367, § 6, eff from and after passage (approved March 17, 2021); Laws, 2022, ch. 439, § 9, eff from and after July 1, 2022.

Joint Legislative Committee Note — Section 9 of Chapter 355, Laws of 2021, effective from and after July 1, 2021 (approved March 17, 2021), amended this section. Section 6 of Chapter 367, Laws of 2021, effective from and after passage (approved March 17, 2021), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 20, 2021, meeting of the Committee.

Amendment Notes — The first 2021 amendment (ch. 355), in (f), inserted "electric bicycles" in the first sentence.

The second 2021 amendment (ch. 367), effective March 17, 2021, in (f), added "or golf carts or low-speed vehicles as defined in Section 63-32-1."

The 2022 amendment added "personal delivery devices" in (f).

RESEARCH REFERENCES

ALR.

Products liability: automobile manufacturer's liability for injuries caused by repairs made under manufacturer's warranty. 40 A.L.R.4th 1218.

What constitutes "motor vehicle" for purposes of no-fault insurance. 73 A.L.R.4th 1053.

Am. Jur.

39 Am. Jur. Trials, Automobile Warranty Litigation, §§ 1 et seq.

11 Am. Jur. Proof of Facts 3d 343, "Lemon Law" Litigation-Existence of Substantial Defect.

§ 63-17-157. Repair of nonconforming vehicle.

For the purposes of Section 63-17-151 et seq., if a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer or its agent during the term of such express warranties or during the period of one (1) year following the date of original delivery of the motor vehicle to the consumer, whichever period expires earlier, the manufacturer or its agent shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

HISTORY: Laws, 1985, ch. 336, § 4, eff from and after July 1, 1985.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the section by substituting "Section 63-17-151 et seq." for "Sections 63-17-151 et seq." The Joint Committee ratified the correction at its August 10, 2022, meeting.

RESEARCH REFERENCES

ALR.

Validity of disclaimer of warranty clauses in sale of new automobile. 54 A.L.R.3d 1217.

Automobile repairman's duty to provide customer with information, estimates, or replaced parts, under automobile repair consumer protection act. 25 A.L.R.4th 506.

Am. Jur.

67A Am. Jur. 2d, Sales §§ 625 et seq.

39 Am. Jur. Trials, Automobile Warranty Litigation, §§ 1 et seq.

31 Am. Jur. Proof of Facts 2d 639, Dealer's Liability for Defective Used Car.

11 Am. Jur. Proof of Facts 3d 343, "Lemon Law" Litigation – Existence of Substantial Defect.

CJS.

60 C.J.S., Motor Vehicles §§ 472-491.

Practice References.

McDonnell and Coleman, Commercial and Consumer Warranties – Drafting, Performing and Litigating (Matthew Bender).

§ 63-17-159. Replacement of vehicle or refund of purchase price where nonconformity cannot be corrected; affirmative defenses; presumption of reasonable attempts to conform vehicle to warranties; extension of warranties; notice requirements relating to repair of nonconformity; civil actions.

(1) If the manufacturer or its agent cannot conform the motor vehicle to any applicable express warranty by repairing or correcting any default or condition which impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall give the consumer the option of having the manufacturer either replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or take title of the vehicle from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the motor vehicle occurs. A reasonable allowance for use shall be that sum of money arrived at by multiplying the number of miles the motor vehicle has been driven by the consumer by Twenty Cents (20¢) per mile. Refunds shall be made to the consumer and lienholder of record, if any, as their interests may appear.

(2) It shall be an affirmative defense to any claim under Section 63-17-151 et seq. that:

(a) An alleged nonconformity does not impair the use, market value or safety of the motor vehicle;

(b) A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer;

(c) A claim by a consumer was not filed in good faith; or

(d) Any other affirmative defense allowed by law.

(3) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if within the terms, conditions or limitations of the express warranty, or during the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, either:

(a) Substantially the same nonconformity has been subject to repair three (3) or more times by the manufacturer or its agent and such nonconformity continues to exist; or

(b) The vehicle is out of service by reason of repair of the nonconformity by the manufacturer or its agent for a cumulative total of fifteen (15) or more working days, exclusive of downtime for routine maintenance as prescribed by the owner's manual, since the delivery of the vehicle to the consumer. The fifteen-day period may be extended by any period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agent.

(4) The terms, conditions or limitations of the express warranty, or the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever expires earlier, may be extended if the motor vehicle warranty problem has been reported but has not been repaired by the manufacturer or its agent by the expiration of the applicable time period.

(5) The manufacturer shall provide a list of the manufacturer's zone or regional service office addresses in the owner's manual provided with the motor vehicle. It shall be the responsibility of the consumer or his representative, prior to availing himself of the provisions of this section, to give written notification to the manufacturer of the need for the repair of the nonconformity, in order to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer shall immediately notify the consumer of a reasonably accessible repair facility to conform the vehicle to the express warranty. After delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall have ten (10) working days to conform the motor vehicle to the express warranty. Upon notification from the consumer that the vehicle has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer in accordance with Section 63-17-163, and provide the consumer with a copy of the provisions of Section 63-17-151 et seq. However, if prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required. If the manufacturer fails to notify the consumer of the availability of this informal dispute settlement procedure, the requirements of Section 63-17-163 shall not apply.

(6) Any action brought under Section 63-17-151 et seq. shall be commenced within one (1) year following expiration of the terms, conditions or

limitations of the express warranty, or within eighteen (18) months following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, or, if a consumer resorts to an informal dispute settlement procedure as provided in Section 63-17-151 et seq., within ninety (90) days following the final action of the panel.

(7) If a consumer finally prevails in any action brought under Section 63-17-151 et seq., the court may allow him to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action.

HISTORY: Laws, 1985, ch. 336, § 5, eff from and after July 1, 1985.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in subsections (2), (6) and (7) by substituting "Section 63-17-151 et seq." for "Sections 63-17-151 et seq." The Joint Committee ratified the correction at its August 10, 2022, meeting.

JUDICIAL DECISIONS

ANALYSIS

1. Statute of limitations.
2. Relation to federal law.
3. Failure to comply.

1. Statute of limitations.

Trial court erred in dismissing, pursuant to Miss. R. Civ. P. 12, a purchaser's action to recover for defects in a mobile home; the purchaser's act of filing an amended complaint within the relevant statute of limitations, Miss. Code Ann. § 63-17-159(6), was sufficient to defeat defendants' motion to dismiss, as the amended complaint, filed pursuant to Miss. R. Civ. P. 15, provided defendants with the required notice under Miss. R. Civ. P. 4. King v. Am. RV Ctrs., Inc., 862 So. 2d 558, 2003 Miss. App. LEXIS 1195 (Miss. Ct. App. 2003), overruled in part, Wilner v. White, 929 So. 2d 315, 2006 Miss. LEXIS 267 (Miss. 2006).

2. Relation to federal law.

Although the Mississippi Motor Vehicle Warranty Enforcement Act does share some characteristics with the Magnuson-Moss Warranty Act, when the statutes as a whole are compared to the Magnuson-Moss Act, the Mississippi Uniform Commercial Code (UCC) is most analogous. Therefore, a trial court erred by finding that the claims filed by two vehicle purchasers were barred by the statute of limitations because a six-year limitations period under the UCC applied. Broome v. GM, LLC, 145 So. 3d 645, 2014 Miss. LEXIS 408 (Miss. 2014).

3. Failure to comply.

Circuit court properly granted summary judgment to an automobile manufacturer and dealer (jointly, the sellers) in a buyer's breach of warranty action because the buyer presented no evidence that the vehicle had manufacturing defects or that his complaints were not part of the normal function of the vehicle, it was undisputed that the sellers were not given at least three attempts to repair the alleged defects or that the alleged defects impaired the use or market value of the vehicle or put the vehicle out of service for 15 or more days, and an inspection of the vehicle found that it operated normally, all the evidence presented showed that the vehicle was new when purchased by the buyer. Lindsey v. Ford Motor Co., 271 So. 3d 757, 2018 Miss. App. LEXIS 651 (Miss. Ct. App. 2018).

RESEARCH REFERENCES

ALR.

Validity of disclaimer of warranty clauses in sale of new automobile. 54 A.L.R.3d 1217.

Automobile repairman's duty to provide customer with information, estimates, or replaced parts, under automobile repair consumer protection act. 25 A.L.R.4th 506.

Products liability: automobile manufacturer's liability for injuries caused by repairs made under manufacturer's warranty. 40 A.L.R.4th 1218.

Liability for delay in making repair of motor vehicle. 44 A.L.R.4th 1174.

Products liability: Manufacturer's post-sale obligation to modify, repair, or recall product. 47 A.L.R.5th 395.

Federal pre-emption of state common-law products liability claims pertaining to motor vehicles. 97 A.L.R. Fed. 853.

Am. Jur.

67A Am. Jur. 2d, Sales §§ 625 et seq.

39 Am. Jur. Trials, Automobile Warranty Litigation, §§ 1 et seq.

31 Am. Jur. Proof of Facts 2d 639, Dealer's Liability for Defective Used Car.

11 Am. Jur. Proof of Facts 3d 343, "Lemon Law" Litigation – Existence of Substantial Defect.

CJS.

60 C.J.S., Motor Vehicles §§ 472-491.

Practice References.

McDonnell and Coleman, Commercial and Consumer Warranties – Drafting, Performing and Litigating (Matthew Bender).

§ 63-17-161. Liability of consumer for bad faith claims.

Any claim by a consumer which is found by the court to have been filed in bad faith, or solely for the purpose of harassment, or in complete absence of a justiciable issue of either law or fact raised by the consumer, shall result in the consumer being liable for all court costs incurred by the manufacturer or its agent as a direct result of the bad faith claim.

HISTORY: Laws, 1985, ch. 336, § 6, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. Trials, Automobile Warranty Litigation, §§ 1 et seq.

§ 63-17-163. Necessity for resort to informal dispute settlement procedure.

If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of 16 C.F.R., Part 703, the provisions of Section 63-17-159 concerning refunds or replacements shall not apply to any consumer who has not first resorted to such procedure.

HISTORY: Laws, 1985, ch. 336, § 7, eff from and after July 1, 1985.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference to "Section 67-17-159" was changed to "Section 63-17-159." The Joint Committee ratified the correction at its May 20, 1998 meeting.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. Trials, Automobile Warranty Litigation, §§ 27-30, 65-68.

§ 63-17-165. Remedies for violations.

Any violation of Section 63-17-151 et seq. shall be subject to the rights and remedies as provided for by Chapter 24, Title 75, Mississippi Code of 1972.

HISTORY: Laws, 1985, ch. 336, § 8, eff from and after July 1, 1985.

Joint Legislative Committee Note —Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the section by substituting "Section 63-17-151 et seq." for "Sections 63-17-151 et seq." The Joint Committee ratified the correction at its August 10, 2022, meeting.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. Trials, Automobile Warranty Litigation, §§ 1 et seq.

SALES OF ALL-TERRAIN VEHICLES AND MOTORCYCLES

Sec.
63-17-171. Levy of point-of-sale fee on retail sales of all-terrain vehicles and motorcycles; levy of fee on purchaser of new all-terrain vehicle or motorcycle purchased in another state and brought into Mississippi; applicability of sales tax law.

§ 63-17-171. Levy of point-of-sale fee on retail sales of all-terrain vehicles and motorcycles; levy of fee on purchaser of new all-terrain vehicle or motorcycle purchased in another state and brought into Mississippi; applicability of sales tax law.

(1)(a) There is levied a point-of-sale fee of Fifty Dollars ($50.00) on the retail sales of all-terrain vehicles and motorcycles as defined in Section 5. The seller of an all-terrain vehicle or a motorcycle shall collect the fee from the purchaser at the time of sale and remit the fee to the Department of Revenue, which shall deposit the proceeds of the fees into the Mississippi Trauma Care Systems Fund created in Section 41-59-75.

(b) The seller of an all-terrain vehicle or a motorcycle shall provide a written statement to the purchaser, which may be printed on the sales receipt, that reads as follows: "$50.00 of the amount that you paid for this vehicle will be used to fund the Mississippi Trauma Care System."

(2)(a) There is levied a fee of Fifty Dollars ($50.00) on a resident of this state who purchases a new and not previously registered motorcycle in another state and brings the motorcycle into this state. The person shall pay the fee to the tax collector at the time of registering the motorcycle and applying for a license tag. The tax collector shall remit the fee to the Department of Revenue, which shall deposit the proceeds of the fee into the Mississippi Trauma Care Systems Fund created in Section 41-59-75.

(b) There is levied a fee of Fifty Dollars ($50.00) on a resident of this state who purchases a new all-terrain vehicle in another state and brings the vehicle into this state. The person shall pay the fee to the Department of Revenue, which shall deposit the proceeds of the fee into the Mississippi Trauma Care Systems Fund created in Section 41-59-75.

(3) As used in this section, the term "all-terrain vehicle" shall not include vehicles designed for use as golf carts.

(4) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such law, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for the fees imposed by this section, and the Commissioner of Revenue shall exercise all the power and authority and perform all the duties with respect to this section as are provided in the Sales Tax Law except where there is a conflict, then the provisions of this section prevail.

HISTORY: Laws, 2008, ch. 549, § 7; Laws, 2011, ch. 545, § 10; Laws, 2012, ch. 566, § 9, eff from and after passage (approved May 25, 2012).

Editor's Notes — Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Cross References — Mississippi Sales Tax Law, see § 27-65-1, et seq.

RECREATIONAL VEHICLE FRANCHISE LAW

Sec.
63-17-201. Definitions.
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§ 63-17-201. Definitions.

As used in Sections 63-17-201 through 63-17-221, the following terms shall have the meanings ascribed unless the context clearly indicates otherwise:

(a) "Area of sales responsibility" means the geographical area, agreed to by the dealer and the manufacturer in the manufacturer-dealer agreement, within which area the dealer has the exclusive right to display or sell the manufacturer's new recreational vehicles of a particular line-make to the retail public.

(b) "Dealer" means any firm, corporation, partnership, individual proprietorship or other type of business enterprise whose principle business is the selling at retail of one or more of the six (6) types of recreational vehicles commonly known as travel trailers, fifth wheels, motor homes, park-model RVs, truck campers and camping trailers. The entity must maintain a permanent business establishment including service/repair facilities, open essentially twelve (12) months a year, must offer mechanical service for the vehicles it sells and must be duly licensed by the Mississippi Motor Vehicle Commission.

(c) "Distributor" means any person, firm, corporation or business entity that purchases new recreational vehicles for resale to dealers.

(d) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or dealers in order to address a part or equipment issue.

(e) "Family member" means a spouse, child, grandchild, parent, sibling, niece or nephew, or the spouse thereof.

(f) "Line-make" means a specific series of recreational vehicle products that:

(i) Are identified by a common series trade name or trademark;

(ii) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight and price range;

(iii) Have lengths and interior floor plans that distinguish the recreational vehicles from other recreational vehicles with substantially the same decor, equipment, features, price and weight;

(iv) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame and body; and

(v) The manufacturer-dealer agreement authorizes a dealer to sell.

(g) "Manufacturer" means any person, firm, corporation or business entity that engages in the manufacturing of recreational vehicles.

(h) "Manufacturer-dealer agreement" means a written agreement or contract entered into between a manufacturer and a dealer that fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreational vehicles.

(i) "Proprietary part" means any part manufactured by or for and sold exclusively by the manufacturer.

(j) "Nonsanctioned recreational show event" means any event where one or more recreational vehicle dealers attend and the event is conducted by a licensed Mississippi Recreational Vehicle Dealer.

(k)(i) "Recreational vehicle" means a vehicle that:

1. Is primarily designed as a vehicle that also provides temporary living quarters for noncommercial, recreational or camping use;

2. Is built to the National Fire Protection Association 1192 standard for recreational vehicles;

3. Has its own motive power or is mounted on or towed by another vehicle;

4. Is regulated by the National Highway Traffic Safety Administration as a vehicle or vehicle equipment;

5. Does not require a special highway use permit for operation on the highways; and

6. An individual can easily transport and set-up on a daily basis.

(ii) "Recreational vehicles" includes, but is not limited to, the following:

1. Motor home: A motorized, vehicular unit designed to provide temporary living quarters for recreational, camping or travel use.

2. Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use of such size and weight as to not require a special highway movement permit when towed by a motorized vehicle.

3. Fifth-wheel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use of such size and weight as to not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

4. Camping trailer: A vehicular unit that is mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping or travel use.

5. Truck camper: A portable unit that is constructed to provide temporary living quarters for recreational, travel or camping use, consists of a roof, floor and sides, and is designed to be loaded onto and unloaded from the back of a pickup truck.

6. "Park-model RV" means a unit that is:

a. Designed and marketed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and not for use as a permanent dwelling;

b. Between three hundred twenty (320) and four hundred (400) square feet based on the exterior dimensions of the structure measured at the largest horizontal projections, when erected on site, including all space that has a ceiling height of more than five (5) feet and any expandable room, slide-out, tip-out, or tag-along unit;

c. Built on a single chassis and not designed to accept additional structures, add-ons or other additions that will increase the area as determined in subitem b in excess of four hundred (400) square feet;

d. Built pursuant to a third-party inspection and certification process; and

e. Built to the ANSI A119.5, Park Model RV Standard.

(*l*) "Sanctioned recreational show event" means any event where one or more recreational vehicle dealers attend and the event is conducted by someone other than a licensed Mississippi Recreational Vehicle Dealer.

(m) "Supplier" means any person, firm, corporation or business entity that engages in the manufacturing of recreational vehicle parts, accessories or components.

(n) "Transient customer" means a customer owns a recreational vehicle, is temporarily traveling through a dealer's area of sales responsibility, engages the dealer to perform service work on the vehicle and whose recreational vehicle requires repairs that relate to the safe operations of that recreational vehicle.

(o) "Warrantor" means any person, firm, corporation or business entity, including any manufacturer or supplier, that provides a written warranty to the consumer in connection with a new recreational vehicle or parts, accessories or components thereof. The term also includes a dealer or other person not controlled by a manufacturer who sells service contracts, mechanical or other insurance, or extended warranties for separate consideration.

HISTORY: Laws, 2014, ch. 532, § 1, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-203. Written agreements; designated territories.

(1) A manufacturer or distributor may not sell a recreational vehicle in this state to or through a dealer without having first entered into a manufacturer-dealer agreement with a dealer that has been signed by both parties.

(2) The manufacturer shall designate the area of sales responsibility exclusively assigned to a dealer in the manufacturer-dealer agreement and may not change the contract area or contract with another dealer for sale of the same line-make in the designated area during the duration of the agreement.

(3) The area of sales responsibility may not be revised or changed without the consent of both parties for one (1) year after the execution of the manufacturer-dealer agreement. Upon renewal both parties must agree on stocking requirements.

(4) A recreational vehicle dealer may not sell a new recreational vehicle in this state without having first entered into a manufacturer-dealer agreement with a manufacturer or distributor that has been signed by both parties. The

manufacturer-dealer agreement must be filed with the Mississippi Motor Vehicle Commission.

(5) For any new recreational vehicle dealer licensee without an established dealership in this state, there shall be a thirty-day waiting period after the date the application has been approved by the Mississippi Motor Vehicle Commission before the new licensee may commence retail operations.

(6) A recreational vehicle manufacturer may not offer to sell or sell any new recreational vehicle to any recreational vehicle dealer at a lower actual price than the actual price charged to any other recreational vehicle dealer for the same line-make vehicle similarly equipped. This subsection shall not be construed to prevent the offering of volume discounts if such discounts are equally available to all franchised dealers in this state.

HISTORY: Laws, 2014, ch. 532, § 2, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-205. Termination, cancellation, nonrenewal and alteration of a dealership.

(1) **Manufacturer or distributor termination.** (a) A manufacturer or distributor, directly or through any authorized officer, agent or employee, may not terminate, cancel or fail to renew a manufacturer-dealer agreement without good cause. If the manufacturer or distributor terminates, cancels or fails to renew the manufacturer-dealer agreement without good cause, the manufacturer or distributor must comply with Section 63-17-207. If the manufacturer or distributor terminates, cancels or fails to renew the manufacturer-dealer agreement for good cause, Section 63-17-207 does not apply.

(b) The manufacturer or distributor has the burden of showing good cause for terminating, canceling or failing to renew a manufacturer-dealer agreement with a dealer. For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

(i) The extent of the affected dealer's penetration in the area of sales responsibility.

(ii) The nature and extent of the dealer's investment in its business.

(iii) The adequacy of the dealer's service facilities, equipment, parts, supplies and personnel.

(iv) The effect of the proposed action on the community.

(v) The extent and quality of the dealer's service under recreational vehicle warranties.

(vi) The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership.

(vii) The dealer's performance under the terms of its manufacturer-dealer agreement.

(c) Except as otherwise provided in this section, a manufacturer or distributor shall provide a dealer with at least ninety (90) days' prior written notice of termination, cancellation or nonrenewal of the manufacturer-dealer agreement if the dealer is being terminated for good cause.

(i) The notice must state all reasons for the proposed termination, cancellation or nonrenewal and must further state that if, within thirty (30) days following receipt of the notice the dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the dealer will then have ninety (90) days following receipt of the notice to rectify the deficiencies. If the deficiencies are rectified within ninety (90) days, the manufacturer's or distributor's notice is voided. If the dealer fails to provide the notice of intent to cure the deficiencies in the prescribed time period, the termination, cancellation or nonrenewal takes effect thirty (30) days after the dealer's receipt of the notice unless the dealer has new and untitled inventory on hand that may be disposed of pursuant to Section 63-17-207.

(ii) The notice period may be reduced to thirty (30) days if the manufacturer's or distributor's grounds for termination, cancellation or nonrenewal are due to any of the following good cause factors:

1. A dealer or one (1) of its owners being convicted of, or entering a plea of nolo contendere to, a felony;
2. The abandonment or closing of the business operations of the dealer for ten (10) consecutive business days without contacting the manufacturer prior to the closing unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;
3. A significant misrepresentation by the dealer materially affecting the business relationship;
4. A suspension or revocation of the dealer's license, or refusal to renew the dealer's license;
5. A material violation of Sections 63-17-201 through 63-17-221 which is not cured within thirty (30) days after the written notice by the manufacturer; or
6. A declaration by the dealer of bankruptcy, insolvency or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(d) The notice provisions of this subsection (1) do not apply if the reason for termination, cancellation or nonrenewal is the dealer's insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

(2) **Dealer termination.** (a) A dealer may terminate or cancel its manufacturer-dealer agreement with a manufacturer or distributor with or without good cause by giving thirty (30) days' written notice. If the termination or cancellation is for good cause, the notice must state all reasons for the proposed termination or cancellation and must further state that if, within thirty (30) days following receipt of the notice, the manufacturer or distributor provides to the dealer a written notice of intent to cure all claimed deficiencies, the manufacturer or distributor will then have ninety (90) days following receipt of

the original notice to rectify the deficiencies. If the deficiencies are rectified within ninety (90) days, the dealer's notice is voided. If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies in the time period prescribed in the original notice of termination or cancellation, the pending termination or cancellation shall take effect thirty (30) days after the manufacturer's or distributor's receipt of the original notice.

(b) If the dealer terminates, cancels or fails to renew the manufacturer-dealer agreement without good cause, the terms of Section 63-17-207 do not apply. If the dealer terminates, cancels or fails to renew the manufacturer-dealer agreement with good cause, Section 63-17-207 applies. The dealer has the burden of showing good cause. Any of the following items shall be deemed "good cause" for the proposed termination, cancellation or nonrenewal action by a dealer:

(i) A manufacturer being convicted of, or entering a plea of nolo contendere to, a felony.

(ii) The business operations of the manufacturer have been abandoned or closed for ten (10) consecutive business days without contacting the dealer prior to the closing unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control.

(iii) A significant misrepresentation by the manufacturer materially affecting the business relationship.

(iv) A material violation of Sections 63-17-201 through 63-17-221 that is not cured within thirty (30) days after written notice by the dealer.

(v) A declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

HISTORY: Laws, 2014, ch. 532, § 3, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-207. Repurchase of inventory.

(1) If the manufacturer-dealer agreement is terminated, canceled, or not renewed by the manufacturer or distributor without good cause as defined in Section 63-17-205(1), or if the dealer terminates or cancels the manufacturer-dealer agreement for good cause as defined in Section 63-17-205(2), and the manufacturer fails to cure the claimed deficiencies as provided in Section 63-17-205(2), the manufacturer shall, at the election of the dealer and within forty-five (45) days after termination, cancellation or nonrenewal, repurchase:

(a) All new, untitled recreational vehicles that were acquired from the manufacturer or distributor within eighteen (18) months before the effective date of the notice of termination, cancellation, or nonrenewal that have not been used, except for demonstration purposes, and that have not been altered or damaged, at one hundred percent (100%) of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer. If any of the vehicles repurchased pursuant to this paragraph (a) are damaged, but do not trigger a consumer disclosure requirement, the amount due the dealer shall be reduced by the cost to repair the vehicle. Damage before delivery to the dealer that is disclosed at the time of delivery will not disqualify repurchase under this provision.

(b) All undamaged accessories and proprietary parts sold to the dealer for resale within the twelve (12) months before termination, cancellation or nonrenewal, if accompanied by the original invoice, at one hundred five percent (105%) of the original net price paid to the manufacturer or distributor to compensate the dealer for handling, packing, and shipping the parts; and

(c) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at one hundred percent (100%) of the dealer's net cost plus freight, destination, delivery and distribution charges and sales taxes, if any, if the returned items were purchased by the dealer within five (5) years before termination, cancellation or nonrenewal at the manufacturer's or distributor's request, if the dealer can establish that the items no longer can be used in the normal course of the dealer's ongoing business. The manufacturer or distributor shall pay the dealer within thirty (30) days after receipt of the returned items.

(2) The warrantor may not prohibit a dealer from selling or performing warranty service on the remaining in-stock inventory of a particular line-make after a dealer agreement has been terminated or not renewed in accordance with the provisions of Section 63-17-205. If recreational vehicles of a line-make are not returned or required to be returned to the manufacturer, the dealer may continue to sell and perform warranty service on all line-makes that were subject to the dealer agreement and are currently in stock until those line-makes are no longer in the dealer's inventory and until all warranties are expired on those recreational vehicles retailed by that dealer.

HISTORY: Laws, 2014, ch. 532, § 4, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-209. Transfer of dealership; family succession.

(1) If a dealer desires to make a change in ownership by the sale of the business assets, stock transfer, or otherwise, the dealer shall give the manufacturer or distributor written notice at least fifteen (15) business days before the closing, including all supporting documentation as may be reasonably required by the manufacturer or distributor to determine if an objection to the sale may be made. In the absence of a breach by the selling dealer of its dealer agreement or this chapter, the manufacturer or distributor shall not object to the proposed change in ownership unless the prospective transferee:

(a) Has previously been terminated by the manufacturer for breach of its dealer agreement;

(b) Has been convicted of a felony or any crime of fraud, deceit, or moral turpitude;

(c) Lacks any license required by law;

(d) Does not have an active line of credit sufficient to purchase a manufacturer's product; or

(e) Has undergone in the last ten (10) years bankruptcy, insolvency, a general assignment for the benefit of creditors, or the appointment of a receiver, trustee or conservator to take possession of the transferee's business or property. This paragraph (e) can be waived if the prospective transferee meets all of the requirements of this section and if the prospective transferee fully qualifies under the manufacturer's or lender's financial criteria.

(2) If the manufacturer or distributor objects to a proposed change of ownership, the manufacturer or distributor shall give written notice of its reasons to the dealer within ten (10) business days after receipt of the dealer's notification and complete documentation. The manufacturer or distributor has the burden of proof with regard to its objection. If the manufacturer or distributor does not give timely notice of its objection, the change or sale shall be deemed approved.

(3) It is unlawful for a manufacturer or distributor to fail to provide a dealer an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity or retirement of the dealer. It is unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated or retired dealer unless the manufacturer or distributor has provided to the dealer written notice of its objections within ten (10) business days after receipt of the dealer's modification of the dealer's succession plan. In the absence of a breach of the dealer agreement, the manufacturer may object to the succession for the following reasons only:

(a) Conviction of the successor of a felony or any crime of fraud, deceit or moral turpitude;

(b) Bankruptcy or insolvency of the successor during the past ten (10) years. This paragraph (b) can be waived if the prospective successor meets all the requirements of this section and if the prospective successor fully qualifies under the manufacturer's or lender's financial criteria;

(c) Prior termination by the manufacturer of the successor for breach of a dealer agreement;

(d) The lack of an active line of credit for the successor sufficient to purchase the manufacturer's product; or

(e) The lack of any license for the successor required by law.

(4) The manufacturer or distributor has the burden of proof regarding its objection. However, a family member may not succeed to a dealership if the succession involves, without the manufacturer's or distributor's consent, a relocation of the business or an alteration of the terms and conditions of the manufacturer-dealer agreement.

HISTORY: Laws, 2014, ch. 532, § 5, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-211. Warranty obligations.

(1) Each warrantor shall:

(a) Specify in writing to each of its dealer obligations, if any, for preparation, delivery and warranty service on its products;

(b) Compensate the dealer for warranty service required of the dealer by the warrantor; and

(c) Provide the dealer the schedule of compensation to be paid and the time allowances for the performance of any work and service. The schedule of compensation must include reasonable compensation for diagnostic work as well as warranty labor.

(2) Time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the actual wage rates being paid by the dealer, and the actual retail labor rate being charged by the dealers in the community in which the dealer is doing business. The compensation of a dealer for warranty labor may not be less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor as long as such rates are reasonable.

(3) The warrantor shall reimburse the dealer for warranty parts at actual wholesale cost plus a minimum thirty percent (30%) handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

(4) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis, not to exceed a twelve-month look-back period from the current calendar date and dealer claims for warranty compensation may not be denied except for cause, such as performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation, fraud or misrepresentation.

(5) The dealer shall submit warranty claims within thirty (30) days after completing work.

(6) The dealer shall immediately notify the warrantor in writing if the dealer is unable to perform any warranty repairs within ten (10) days of receipt of written complaints from a consumer.

(7) The warrantor shall disapprove warranty claims in writing within thirty (30) days after the date of submission by the dealer in the manner and form prescribed by the warrantor. All claims shall be paid as authorized. Claims submitted according to warrantor's guidelines not specifically disapproved in writing within thirty (30) days shall be construed to be approved and must be paid within thirty (30) days of submission. Claims related to any type

of service contract, mechanical or other insurance, or extended warranty sold for separate consideration by a dealer or other person not controlled by a manufacturer must be paid to the dealer as authorized immediately upon submission of completion by the dealer.

(8) It is a violation of Sections 63-17-201 through 63-17-221 for any warrantor to:

(a) Fail to perform any of its warranty obligations with respect to its warranted products;

(b) Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the campaign work. The warrantor may ship parts to the dealer to effect the campaign work, and, if such parts are in excess of the dealer's requirements, the dealer may return unused parts to the warrantor for credit after completion of the campaign;

(c) Fail to compensate any of its dealers for authorized repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer, if the carrier is designated by the warrantor, factory branch, distributor or distributor branch;

(d) Fail to compensate any of its dealers in accordance with the schedule of compensation provided to the dealer pursuant to this section if performed in a timely and competent manner;

(e) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance or design of the vehicle are made by the dealer as warrantor or co-warrantor; or

(f) Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(9) It is a violation of Sections 63-17-201 through 63-17-221 for any dealer to:

(a) Fail to perform pre-delivery inspection functions, as specified by the warrantor, in a competent and timely manner;

(b) Fail to perform warranty service work authorized by the warrantor in a reasonably competent and timely manner on any transient customer's vehicle of the same line-make;

(c) Fail to accurately document the time spent completing each repair, the total number of repair attempts conducted on a single unit, and the number of repair attempts for the same repair conducted on a single vehicle;

(d) Fail to notify the warrantor within ten (10) days of a second repair attempt which impairs the use, value or safety of the vehicle;

(e) Fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair; or

(f) Make fraudulent warranty claims or misrepresent the terms of any warranty.

HISTORY: Laws, 2014, ch. 532, § 6, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-213. Indemnification.

Notwithstanding the terms of any manufacturer-dealer agreement, it is a violation of Sections 63-17-201 through 63-17-221 for:

(a) A warrantor to fail to indemnify and hold harmless its dealer against any losses or damages to the extent the losses or damages are caused by the negligence or willful misconduct of the warrantor. The dealer shall provide to the warrantor a copy of any pending law suit or similar proceeding in which allegations are made that come within this subsection within ten (10) days after receiving the suit.

(b) A dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent the losses or damages are caused by the negligence or willful misconduct of the dealer. The warrantor shall provide to the dealer a copy of any pending law suit or similar proceeding in which allegations are made that come within this subsection within ten (10) days after receiving the suit.

HISTORY: Laws, 2014, ch. 532, § 7, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-215. Inspection and rejection by dealer.

(1) Whenever a new recreational vehicle is damaged before transit to the dealer or is damaged in transit to the dealer when the carrier or means of transportation has been selected by the manufacturer or distributor, the dealer shall notify the manufacturer or distributor of the damage within the timeframe specified in the manufacturer-dealer agreement and:

(a) Request from the manufacturer or distributor authorization to replace the components, parts and accessories damaged or otherwise correct the damage; or

(b) Reject the vehicle within the timeframe set forth in subsection (4) of this section.

(2) If the manufacturer or distributor refuses or fails to authorize repair of such damage within ten (10) days after receipt of notification, or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle shall revert to the manufacturer or distributor.

(3) The dealer shall exercise due care in custody of the damaged recreational vehicle, but the dealer shall have no other obligations, financial or otherwise, with respect to that recreational vehicle.

(4) The timeframe for inspection and rejection by the dealer must be part of the manufacturer-dealer agreement and may not be less than two (2) business days after the physical delivery of the recreational vehicle.

(5) Any recreational vehicle that has, at the time of delivery to the dealer, an unreasonable amount of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor. In no instance shall a dealer deem an amount less than the distance between the dealer and the manufacturer's factory or a distributor's point of distribution, plus one hundred (100) miles, as unreasonable.

HISTORY: Laws, 2014, ch. 532, § 8, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-217. Coercion of dealer prohibited.

(1) A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

(a) Purchase a product that the dealer did not order;

(b) Enter into an agreement with the manufacturer or distributor; or

(c) Enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under Sections 63-17-201 through 63-17-221.

(2) As used in this section, the term "coerce" includes, but is not limited to, threatening to terminate, cancel or not renew a manufacturer-dealer agreement without good cause or threatening to withhold product lines the dealer is entitled to purchase pursuant to the manufacturer-dealer agreement or delay product delivery as an inducement to amending the manufacturer-dealer agreement.

HISTORY: Laws, 2014, ch. 532, § 9, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-219. Mediation.

(1) A dealer, manufacturer or warrantor injured by another party's violation of Sections 63-17-201 through 63-17-221 may bring a civil action in circuit court to recover actual damages. The court shall award attorney's fees and costs to the prevailing party in such an action. Venue for any civil action authorized by this section shall exclusively be in the county in which the dealer's business is located. In an action involving more than one (1) dealer,

venue may be in any county in which any dealer that is party to the action is located.

(2) Prior to bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party.

(a) The demand for mediation shall be served upon the other party via certified mail at the address stated within the manufacturer-dealer agreement between the parties.

(b) The demand for mediation shall contain a brief statement of the dispute and the relief sought by the party filing the demand.

(c) Within twenty (20) days after the date a demand for mediation is served, the parties shall mutually select an independent certified mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be in this state in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown either party or upon stipulation of both parties.

(d) The service of a demand for mediation under this section shall toll the time for the filing of any complaint, petition, protest or other action under Sections 63-17-201 through 63-17-221 until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest or other action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the mediation meeting has occurred and may, upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, enter an order suspending the proceeding or action for as long a period as the court considers appropriate.

(e) The parties to the mediation shall bear their own costs for attorney's fees and divide equally the cost of the mediator.

(3) In addition to the remedies provided in this section and notwithstanding the existence of any additional remedy at law, a manufacturer, or warrantor, or a dealer is authorized to make application to a circuit court for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a dealer without being properly licensed, from violating or continuing to violate any of the provisions of Sections 63-17-201 through 63-17-221, or from failing or refusing to comply with the requirements of Sections 63-17-201 through 63-17-221. Injunction under this provision shall be issued without bond. A single act in violation of the provisions of Sections 63-17-201 through 63-17-221 shall be sufficient to authorize the issuance of an injunction.

HISTORY: Laws, 2014, ch. 532, § 10, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

§ 63-17-221. Selling at shows.

(1) A recreational vehicle dealer may not sell or display for sale a new recreational vehicle in this state unless the dealer is licensed by the Mississippi Motor Vehicle Commission to sell recreational vehicles in the State of Mississippi. The recreational vehicle dealer is also required to have a dealer agreement with the manufacturer of the recreational vehicle that meets the requirements of Sections 63-17-201 through 63-17-221 and is signed by both parties.

(2) Out-of-state recreational vehicle dealers may participate in sanctioned or nonsanctioned recreational vehicle shows under the following circumstances:

(a) An out-of-state recreational vehicle dealer must have the unanimous approval, in writing, of all recreational vehicle dealers that have the area of responsibility where the sanctioned or nonsanctioned show event is held;

(b) Out-of-state recreational vehicle dealers must obtain permission, in writing, from the manufacturer for all models to be displayed where the sanctioned or nonsanctioned show event is being held; and

(c) Out-of-state recreational vehicle dealers must obtain a permit from the Mississippi Motor Vehicle Commission to participate in a sanctioned recreational vehicle show.

(3) A recreational vehicle dealer may not conduct sales activity or display for sale recreational vehicles outside of the dealer's designated area of sales responsibility.

(4) A recreational vehicle dealer may sell off-premises within the area of sales responsibility of the dealer under the following circumstances:

(a) At sanctioned recreational vehicle shows where the sales event is held off premises. A sanctioned recreational vehicle show may be held only under the following conditions:

(i) The sponsoring entity of the sales event shall obtain a permit from the Mississippi Motor Vehicle Commission, which shall be for a period not to exceed ten (10) consecutive days;

(ii) New recreational vehicle dealers whose manufacturer-approved area of responsibility includes the event location shall be eligible to participate in the sanctioned recreational vehicle show; and

(iii) The sanctioned recreational vehicle show shall be conducted within municipal, county or state-owned or controlled facilities or within the grounds of any county, district or state fair; and

(b) At nonsanctioned recreational vehicle shows where one or more recreational vehicle dealers may sell recreational vehicles off premises under the following conditions:

(i) The location of the nonsanctioned recreational vehicle show shall be within the manufacturer-approved area of responsibility;

(ii) The nonsanctioned recreational vehicle show shall occur not more than five (5) consecutive days per event, excluding county, district or state fairs;

(iii) Each recreational vehicle dealer may participate in not more than eight (8) nonsanctioned recreational vehicle shows per calendar year; and

(iv) Nonsanctioned recreational vehicle shows shall be held on privately owned property not closer than two and one-half (2.5) miles to any other nonparticipating recreational vehicle dealer; provided, however, a nonsanctioned recreational vehicle show may be held on county or municipally owned property with no mileage barrier restriction.

(5) A recreational vehicle dealer may display a recreational vehicle within the designated area of responsibility of the recreational vehicle dealer for promotional purposes. At an off-premises display event, no sales activities shall be conducted including, but not limited to, negotiations, financing and accepting credit applications. Sales or finance personnel shall not be permitted to participate at an off-premises display event.

HISTORY: Laws, 2014, ch. 532, § 11, eff from and after Oct. 1, 2014.

Editor's Notes — Laws of 2014, ch. 532, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after October 1, 2014, and shall apply to manufacturer-dealer agreements entered into on or after that date."

CHAPTER 19.

MOTOR VEHICLE SALES FINANCE LAW

Sec.

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63-19-57. Liability of licensees.

§ 63-19-1. Short title.

This chapter may be cited as "The Motor Vehicle Sales Finance Law."

HISTORY: Codes, 1942, § 8075-23; Laws, 1958, ch. 495, § 36, eff from and after 90 days after passage (approved April 22, 1958).

RESEARCH REFERENCES

ALR.

Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 29 et seq.

CJS.
60 C.J.S., Motor Vehicles §§ 75 et seq.

§ 63-19-3. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context or subject matter otherwise requires:

(a) "Motor vehicle" means any self-propelled or motored device designed to be used or used primarily for the transportation of passengers or property, or both, and having a gross vehicular weight rating of less than fifteen thousand (15,000) pounds, but shall not include electric personal assistive mobility devices, personal delivery devices or electric bicycles as defined in Section 63-3-103.

(b) "Commercial vehicle" means any self-propelled or motored device designed to be used or used primarily for the transportation of passengers or property, or both, and having a gross vehicular weight rating of fifteen thousand (15,000) pounds or more; however, wherever "motor vehicle" appears in this chapter, except in Section 63-19-43, the same shall be construed to include commercial vehicles where such construction is necessary in order to give effect to this chapter.

(c) "Retail buyer" or "buyer" means a person who buys a motor vehicle or commercial vehicle from a retail seller, not for the purpose of resale, and who executes a retail installment contract in connection therewith.

(d) "Retail seller" or "seller" means a person who sells a motor vehicle or commercial vehicle to a retail buyer under or subject to a retail installment contract.

(e) The "holder" of a retail installment contract means the retail seller of the motor vehicle or commercial vehicle under or subject to the contract or if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

(f) "Retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle or commercial vehicle from the retail seller at a time price payable in one or more deferred installments. The cash sale price of the motor vehicle or commercial vehicle, the amount included for insurance and other benefits if a separate charge is made therefor, official fees and the finance charge shall together constitute the time price.

(g) "Retail installment contract" or "contract" means an agreement entered into in this state pursuant to which the title to or a lien upon the motor vehicle or commercial vehicle which is the subject matter of a retail installment transaction is retained or taken by a retail seller from a retail buyer as security for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle or commercial vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

(h) "Cash sale price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle or commercial vehicle which is the subject matter of the retail installment contract, if such sale had been a sale for cash instead of a retail installment transaction. The cash sale price may include any taxes, registration, certificate of title, if any, license and other fees and charges for accessories and their installation and for delivery, servicing, repairing or improving the motor vehicle or commercial vehicle.

(i) "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a retained title or a lien created by a retail installment contract, if recorded.

(j) "Finance charge" means the amount agreed upon between the buyer and the seller, as limited in this chapter, to be added to the aggregate of the cash sale price, the amount, if any, included for insurance and other benefits and official fees, in determining the time price.

(k) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term includes, but is not limited to, a bank, trust company, private banker, industrial bank or investment company, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of creating and holding retail installment contracts which exceed a total aggregate outstanding indebtedness of Five Hundred Thousand Dollars ($500,000.00). The term does not include the pledgee to whom is pledged one or more of such contracts to secure a bona fide loan thereon.

(*l*) "Person" means an individual, partnership, corporation, association and any other group however organized.

(m) "Administrator" means the Commissioner of Banking and Consumer Finance or his duly authorized representative.

(n) "Commissioner" means the Commissioner of Banking and Consumer Finance.

(o) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

Words in the singular include the plural and vice versa.

HISTORY: Codes, 1942, § 8075-01; Laws, 1958, ch. 495, §§ 1-14; Laws, 1968, ch. 537, § 1; Laws, 1975, ch. 316, § 1; Laws, 1990, ch. 303, § 1; Laws, 1997, ch. 332, § 1; Laws, 2000, ch. 621, § 1; Laws, 2003, ch. 485, § 13, eff from and after July 1, 2003; Laws, 2021, ch. 355, § 10, eff from and after July 1, 2021; Laws, 2022, ch. 439, § 10, eff from and after July 1, 2022.

Amendment Notes — The 2021 amendment, in (a), inserted "or electric bicycles."

The 2022 amendment inserted "personal delivery devices" in (a).

RESEARCH REFERENCES

ALR.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCS § 1605(a)) or applicable regulations. 46 A.L.R. Fed. 657.

§ 63-19-5. Repealed.

Repealed by Laws 1991, ch. 319, § 1, eff from and after July 1, 1991.

§ 63-19-5. [Codes, 1942, § 8075-01; Laws, 1958, ch. 495, §§ 1-14; Laws, 1968, ch. 537, § 1; brought forward Laws, 1990, ch. 303, § 2]

Editor's Notes — Former § 63-19-5 related to effect of retail installment contract on rights of subsequent lien holders or purchasers.

§ 63-19-7. Requirement of license.

No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this chapter. However, no bank, trust company, private banker, industrial bank or investment company authorized to do business in this state shall be required to obtain a license under this chapter. They shall, however, comply with all of the other provisions of this chapter.

HISTORY: Codes, 1942, § 8075-02; Laws, 1958, ch. 495, § 15, eff from and after 90 days after passage (approved April 22, 1958).

Cross References — Banks and financial institutions generally, see § 81-1-57 et seq.

Finance charge limitations, see § 63-19-43.

License required of person handling loans or lending money under Small Loan Regulatory Law, see § 75-67-105.

License required of person handling loans or lending money under Small Loan Privilege Tax Law, see § 75-67-205.

RESEARCH REFERENCES

ALR.

Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-9. Application for license.

The application for such license shall be in writing, under oath and in the form prescribed by the administrator. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers; and such other pertinent information as the administrator may require.

HISTORY: Codes, 1942, § 8075-03; Laws, 1958, ch. 495, § 16, eff from and after 90 days after passage (approved April 22, 1958).

§ 63-19-11. License fee.

With each initial application for a license, the applicant shall pay to the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars ($750.00), and for renewal applications, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00) for each calendar year for each place of business so operated.

HISTORY: Codes, 1942, § 8075-04; Laws, 1958, ch. 495, § 17; Laws, 1975, ch. 437, § 1; Laws, 2000, ch. 621, § 2, eff from and after passage (approved May 23, 2000).

§ 63-19-13. Issuance and duration of license; transfer or assignment of license; transaction of business under different name.

Upon the filing of an application, and the payment of the required fee, the administrator shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this chapter for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this chapter under any other name.

HISTORY: Codes, 1942, § 8075-06; Laws, 1958, ch. 495, § 16, eff from and after 90 days after passage (approved April 22, 1958).

§ 63-19-15. Specification as to location of office in license; display of license.

Each license shall specify the location of the office and must be conspicuously displayed there.

HISTORY: Codes, 1942, § 8075-05; Laws, 1958, ch. 495, § 18; Laws, 2000, ch. 621, § 3, eff from and after passage (approved May 23, 2000).

§ 63-19-17. Grounds for denial, suspension or revocation of license.

(1) The renewal of a license originally granted under this chapter may be denied, or a license may be suspended, denied or revoked by the administrator on the following grounds:

(a) Material misstatement in application for license;

(b) Willful failure to comply with provision of this chapter relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this chapter.

(2) Any licensee who is exempt from liability for an act or omission under Section 63-19-57 shall not have his license suspended or revoked or the renewal of his license denied under this section for the same act or omission.

HISTORY: Codes, 1942, § 8075-07; Laws, 1958, ch. 495, § 20; Laws, 1997, ch. 332, § 15, eff from and after passage (approved March 17, 1997).

RESEARCH REFERENCES

ALR.

Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-19. Liability of licensee for acts of agents.

If a licensee is a firm, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

HISTORY: Codes, 1942, § 8075-08; Laws, 1958, ch. 495, § 21, eff from and after 90 days after passage (approved April 22, 1958).

§ 63-19-21. Procedure for denial, suspension or revocation of license; judicial review.

No license shall be denied, suspended or revoked except after hearing thereon. The administrator shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of such hearing by certified mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the administrator and shall not be effective until after thirty days' written notice thereof given after such entry forwarded by registered mail to the licensee at such principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

Within thirty days after any such denial, suspension or revocation of a license the person aggrieved may apply for a review thereof by an application to any chancellor or judge of the chancery court of the county wherein is located the principal place of business in this state of such licensee in accordance with the practice of said court. Any chancellor or judge of the chancery court of the county wherein is located the principal place of business in this state of such licensee shall determine de novo all questions, both of fact and of law, touching upon the legality and reasonableness of the determination of the administrator, and shall render such judgment as shall be lawful and just.

HISTORY: Codes, 1942, § 8075-09; Laws, 1958, ch. 495, § 22, eff from and after 90 days after passage (approved April 22, 1958).

§ 63-19-23. Investigations and examinations of licensees.

The administrator shall, at intermittent periods, make such investigations and examinations of any licensee or other person as he deems necessary to determine compliance with this chapter. For such purpose he may examine the books, accounts, records and other documents or matters of any licensee or other person. He shall have the power to compel the production of all relevant books, records and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the administrator has reason to believe the licensee is not complying with the provisions of this chapter.

HISTORY: Codes, 1942, § 8075-10; Laws, 1958, ch. 495, § 23, eff from and after 90 days after passage (approved April 22, 1958).

§ 63-19-25. Filing and examination of complaints against licensees.

Any retail buyer having reason to believe that this chapter relating to his retail installment contract has been violated may file with the administrator a written complaint setting forth the details of such alleged violation. The administrator, upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

HISTORY: Codes, 1942, § 8075-11; Laws, 1958, ch. 495, § 24, eff from and after 90 days after passage (approved April 22, 1958).

§ 63-19-27. Payment of expenses of examination by licensee.

The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

All expense fees paid to the commissioner shall be deposited by the commissioner in the State Treasury in a special and separate fund to be known as the "Consumer Finance Fund."

HISTORY: Codes, 1942, § 8075-17; Laws, 1958, ch. 495, § 30; Laws, 1975, ch. 440, § 1; Laws, 1985, ch. 345, § 1; brought forward, Laws, 1990, ch. 303, § 3; Laws, 2000, ch. 621, § 4; Laws, 2004, ch. 450, § 1, eff from and after passage (approved Apr. 28, 2004).

Cross References — Payment of administration expenses, see § 63-19-51.

Expenditure from Consumer Finance Fund for administration of Small Loan Regulatory Law (§§ 75-67-101 set seq.), see § 75-67-239.

§ 63-19-29. Issuance of subpoenas; administration of oaths; enforcement of subpoenas, etc.

The administrator shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this chapter. The administrator shall have the power to administer oaths and affirmations to any person whose testimony is required.

If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge or chancellor of the chancery court of the first judicial district of Hinds County may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of said court, for the witness to appear before the administrator and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the said chancery court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.

If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the administrator may apply to any judge or chancellor of the chancery court of the first judicial district of Hinds County for an attachment against such person, as for a contempt. The judge, or chancellor, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge, or chancellor, shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence, that may be proper by imposition of a fine, not exceeding one hundred dollars ($100.00), or by imprisonment in the county jail, or by both imposition of a fine and imprisonment, and to compel such witness to pay the costs of such proceeding to be taxed.

HISTORY: Codes, 1942, § 8075-12; Laws, 1958, ch. 495, § 25, eff from and after 90 days after passage (approved April 22, 1958).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

§ 63-19-31. Execution, terms and delivery of retail installment contract.

(1)(a) A retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least eight point type. The contract shall contain in a size equal to at least ten point bold type:

(i) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

(ii) The following notice: "Notice to the Buyer: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign."

(c) The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of the delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

(d) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks.

(2) The contract shall contain the following items:

(a) The cash sale price of the motor vehicle;

(b) The amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods;

(c) The difference between items (a) and (b);

(d) The amount, if any, included for insurance and other benefits specifying the types of coverage and benefits;

(e) The amount of official fees;

(f) The amount, if any, actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest, lien or lease interest on property traded in;

(g) The principal balance, which is the sum of items (c), (d), (e) and (f);

(h) The amount of the finance charge;

(i) The time balance, which is the sum of items (g) and (h), payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

The above items need not be stated in the sequence or order set forth. Additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer. Notwithstanding any provision of this chapter to the contrary, in any contract evidencing the sale of a commercial vehicle, the statement of the amount of the finance charge (item (h) hereof) and the amount of each installment (item (i) hereof) may be calculated using the finance charge rate applicable to the transaction as of the date of execution of the contract, notwithstanding the fact that such finance charge rate may increase or decrease over the term of the contract according to any formula or index set forth in the contract; provided, however, that under no circumstances may the variable rate under such contract at any time exceed the finance charge limitations found in Section 63-19-43, of this chapter.

(3) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of subdivision (c) of subsection (1) of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed did not contain any blank spaces except as herein provided, and of compliance with Sections 63-19-31 through 63-19-41 in any action or proceeding by or against the holder of the contract.

HISTORY: Codes, 1942, § 8075-13; Laws, 1958, ch. 495, § 26; Laws, 1985, ch. 527, § 1; Laws, 1999, ch. 426, § 1; Laws, 2000, ch. 621, § 5, eff from and after passage (approved May 23, 2000).

Cross References — Written statement furnished buyer concerning payments and amount due, see § 63-19-39.

Finance charge limitations, see § 63-19-43.

JUDICIAL DECISIONS

1. Required disclosure.

Where plaintiff African-American car buyers alleged defendants, a lender and car dealers, failed to disclose a higher dealer mark-up than that which was charged to white buyers, the claim failed because the markups, which were an element of the total finance charge, did not have to be disclosed under the Mississippi Vehicle Sales Financing Law, Miss. Code Ann. § 63-19-31(2)(h); allegations of racial animus went to the discrimination claims but did nothing to support the fraudulent nondisclosure claims. Davis v. GMAC, 406 F. Supp. 2d 698, 2005 U.S. Dist. LEXIS 30432 (N.D. Miss. 2005).

RESEARCH REFERENCES

ALR.
Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-33. Purchase of insurance pursuant to retail installment contract.

(1) The amount, if any, included in a retail installment contract for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the state insurance commission. If dual interest insurance on the motor vehicle is purchased by the holder it shall, within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing such insurance from an agent or broker of his own selection; in such case, however, the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

No holder shall unreasonably or arbitrarily refuse to accept coverage by an insurance company tendered by the buyer.

(2) If any insurance is cancelled, or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

HISTORY: Codes, 1942, § 8075-13; Laws, 1958, ch. 495, § 26, eff from and after 90 days after passage (approved April 22, 1958).

Cross References — Buyer's signature constituting acknowledgement of delivery of contract and that contract did not contain blank spaces, see § 63-19-31.

RESEARCH REFERENCES

ALR.
Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-35. Delinquency and collection charges; court costs and attorneys' fees.

The holder may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on a contract evidencing the sale of a commercial vehicle in an amount not exceeding Five Dollars ($5.00) or four percent (4%) of the amount of any delinquency in default for a period of not less than fifteen (15) days, whichever is greater, but in no event to exceed Fifty Dollars ($50.00), and on all other retail installment contracts a delinquency and collection charge in an amount not in excess of five percent (5%) or Five Dollars ($5.00), whichever is less, on each installment in default for a period of not less than ten (10) days. In addition to such delinquency and collection charge, the contract may provide for the payment of court costs and of attorneys' fee not exceeding fifteen per cent (15%) of the amount actually due and unpaid at the time the balance of the contract is accelerated and the entire amount thereof is declared to be due, if the same is referred to an attorney for collection. However, no such attorneys' fee may be charged or collected where the attorney to whom the contract was referred for collection is a salaried employee of the holder of the contract.

HISTORY: Codes, 1942, § 8075-13; Laws, 1958, ch. 495, § 26; Laws, 1985, ch. 368, eff from and after July 1, 1985.

Cross References — Buyer's signature constituting acknowledgement of delivery of contract and that contract did not contain blank spaces, see § 63-19-31.

RESEARCH REFERENCES

ALR.
Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-37. Transfer of equity in motor vehicle; transfer fee.

The buyer may transfer his equity in the motor vehicle at any time to another person upon agreement by the holder, and, in such event, the holder of the contract shall be entitled to charge and collect a transfer of equity fee which shall not exceed fifteen dollars ($15.00). No transfer of equity fee shall be charged or collected unless the holder of the contract shall, in writing, release the transferor from all further liability under such contract.

HISTORY: Codes, 1942, § 8075-13; Laws, 1958, ch. 495, § 26, eff from and after 90 days after passage (approved April 22, 1958).

Cross References — Buyer's signature constituting acknowledgement of delivery of contract and that contract did not contain blank spaces, see § 63-19-31.

RESEARCH REFERENCES

ALR.
Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-39. Furnishing of buyer with statement of payments and unpaid balance and written receipt for cash payment.

Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement, in conformity with Section 63-19-31, of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

HISTORY: Codes, 1942, § 8075-13; Laws, 1958, ch. 495, § 26; Laws, 1985, ch. 527, § 2, eff from and after July 1, 1985.

Cross References — Buyer's signature constituting acknowledgement of delivery of contract and that contract did not contain blank spaces, see § 63-19-31.

RESEARCH REFERENCES

ALR.

Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-41. Restriction of remedies of buyer against holder.

No provision in a retail installment contract relieving the holder from liability for any legal remedies which the buyer may have against the seller under the contract, or any separate instrument executed in connection therewith, shall be enforceable.

HISTORY: Codes, 1942, § 8075-13; Laws, 1958, ch. 495, § 26, eff from and after 90 days after passage (approved April 22, 1958).

Cross References — Buyer's signature constituting acknowledgement of delivery of contract and that contract did not contain blank spaces, see § 63-19-31.

RESEARCH REFERENCES

ALR.

Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-43. Maximum finance charge; security interests.

(1) The maximum finance charge which may be contracted for or received for any purchase money loan or purchase money extension of credit made by any lender or by any licensed retail seller, or by any other entity that is expressly exempt from licensing but expressly subject to compliance with this chapter under the provisions of Section 63-19-7, in connection with sales or financing of motor vehicles and commercial vehicles, as defined in Section 63-19-3(a) and 63-19-3(b), made under this chapter, may result in a yield not

to exceed the following annual percentage rates calculated according to the actuarial method:

(a) Class 1. Any new motor vehicle manufactured in the same year or the year immediately prior to the year in which the sale is made – eighteen percent (18%) per annum on the unpaid balance.

(b) Class 2. Any new motor vehicle not in Class 1, any used motor vehicle manufactured not more than two (2) years prior to the year in which the sale is made, and any new commercial vehicle or used commercial vehicle manufactured not more than one (1) year prior to the year in which the sale is made – twenty-one percent (21%) per annum on the unpaid balance.

(c) Class 3. Any used motor vehicle not in Class 2 and manufactured not more than four (4) years prior to the year in which the sale is made and any used commercial vehicle not in Class 2 – twenty-six and seventy-five one-hundredths percent (26.75%) per annum on the unpaid balance.

(d) Class 4. Any used motor vehicle not in Class 2 or Class 3 and manufactured more than four (4) years prior to the year in which the sale is made – twenty-eight and seventy-five one-hundredths percent (28.75%) per annum on the unpaid balance.

(2) The discount rate referred to in subsection (1) of this section shall be determined, posted and accorded evidentiary weight as provided in Section 75-17-33.

(3) Any subsequent extension, renewal or refinancing of any purchase money loan or purchase money extension of credit under this chapter which is secured by a perfected security interest in a motor vehicle or commercial vehicle pursuant to Section 63-21-43 shall continue to be secured by such security interest without the necessity of reapplying for a certificate of title under that section.

HISTORY: Codes, 1942, § 8075-14; Laws, 1958, ch. 495, § 24; Laws, 1974, ch. 564, § 2; Laws, 1975, ch. 316, § 2; Laws, 1980, ch. 492, § 2; Laws, 1982, ch. 468, § 2; Laws, 1984, ch. 501, § 2; Laws, 1986, ch. 510, § 11; Laws, 1996, ch. 433, § 1, eff from and after July 1, 1996.

Editor's Notes — Laws of 1980, ch. 492, §§ 6 and 7, provide as follows:

"SECTION 6. The provisions of this act shall apply only to contracts, agreements, or evidences of indebtedness entered into on or after the effective date of this act, and shall not defeat, extinguish or render void any claim or defense existing with respect to contracts, agreements or evidences of indebtedness entered into prior to the effective date of this act.

"SECTION 7. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1982, ch. 468, § 6, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1984, ch. 501, § 6, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Laws, 1986, ch. 500, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Provisions of retail installment contract, see § 63-19-31.

Legal rate of interest generally, see § 75-17-1.

Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

RESEARCH REFERENCES

ALR.

Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

§ 63-19-45. Assignment of retail installment contract.

Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the holder maintain dominion over the payments or the motor vehicle if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

HISTORY: Codes, 1942, § 8075-14; Laws, 1958, ch. 495, § 24, eff from and after 90 days after passage (approved April 22, 1958).

RESEARCH REFERENCES

ALR.

Regulation or licensing of business of selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-47. Payment of debt in full prior to maturity.

Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may pay in full at any time before maturity the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments provided such contract shall have a precomputed finance charge. The amount of such refund shall be calculated on the rule of the sum of the digits, commonly known as the "Rule of 78ths," after deducting from such refund an acquisition cost of Ten Dollars ($10.00). Where the amount of credit is less than One Dollar ($1.00), no refund need be made. In the event the finance charge on a contract evidencing the sale of a commercial vehicle is not precomputed, any buyer may pay in full at any time before maturity the then remaining unpaid principal balance of the contract and shall pay a penalty for such prepayment as may have been agreed to by the buyer and the seller in the contract, not to exceed Fifty Dollars ($50.00).

The provisions of this section shall apply in the event the vehicle is repossessed by the finance company or the dealer, and the dealer is required to pay the balance of indebtedness due the holder thereof.

HISTORY: Codes, 1942, § 8075-15; Laws, 1958, ch. 495, § 25; Laws, 1985, ch. 527, § 3; brought forward, Laws, 1990, ch. 303, § 4; Laws, 1997, ch. 332, § 2, eff from and after passage (approved March 17, 1997).

§ 63-19-49. Repealed.

Repealed by Laws, 1974, ch. 564, § 8, eff from and after July 1, 1974.
§ 63-19-49. [Codes, 1942, § 8075-16; Laws, 1958, ch. 495, § 29]

Editor's Notes — Former § 63-19-49 governed the refinancing of retail installment contracts.

§ 63-19-51. Administration of chapter.

The commissioner is authorized to employ the necessary examiners and other personnel required to administer the provisions of this chapter and to fix their compensation commensurate with their duties. All salaries, travel and other expenses incident to the administration of this chapter shall be paid by the commissioner by warrants issued by the State Auditor. Said State Auditor shall issue his warrant upon requisition signed by the commissioner or his duly authorized agent. All salaries, travel and other expenses incident to the administration of this chapter shall be paid monthly. All travel, subsistence and other expenses shall be audited by the commissioner or his duly authorized agent. All warrants issued by the State Auditor pursuant to the provisions of this section shall be paid by the State Treasurer out of the "Consumer Finance Fund" created by Section 63-19-27.

HISTORY: Codes, 1942, § 8075-18; Laws, 1958, ch. 495, § 31; Laws, 1985, ch. 345, § 3, eff from and after July 1, 1985.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 63-19-52. Administration of chapter; issuance of rules and regulations.

The commissioner shall have the power and authority to adopt, promulgate and issue such rules and regulations, not inconsistent with this article, or any other statute of the State of Mississippi, as he shall deem necessary for the purpose of the administration of this chapter. A copy of every rule and regulation promulgated by the commissioner shall be filed in accordance with the Administrative Procedures Law, Section 25-43-1 et seq.

HISTORY: Laws, 1997, ch. 332, § 8, eff from and after passage (approved March 17, 1997).

Editor's Notes — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., referred to in this section, shall be deemed to mean and refer to Section 25-43-1.101 et seq.

§ 63-19-53. Waiver of provisions of chapter.

Any waiver of the provisions of this chapter shall be unenforceable and void.

HISTORY: Codes, 1942, § 8075-20; Laws, 1958, ch. 495, § 33, eff from and after 90 days after passage (approved April 22, 1958).

§ 63-19-55. Penalties for violations of chapter.

(1) Any person who willfully and intentionally violates any provision of this chapter or engages in the business of a sales finance company in this state without a license therefor as provided in this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding Five Hundred Dollars ($500.00). However, any licensee who is exempt from liability for an act or omission under Section 63-19-57 shall not be guilty of a misdemeanor under this section for the same act or omission.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

(3) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The civil

penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Any person willfully violating Sections 63-19-31 through 63-19-45, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract.

(5) However, any such contract purchased in good faith for value by any bank, trust company, private bank, industrial bank or investment company authorized to do business in this state shall be held and construed to be valid and enforceable in the hands of the purchaser for value, except that such purchaser shall not be permitted to recover on such contract from the buyer anything in excess of the principal balance due thereon, plus the amount of the finance and collection charges permitted under the terms and provisions of this chapter.

(6) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

HISTORY: Codes, 1942, § 8075-19; Laws, 1958, ch. 495, § 32; Laws, 1997, ch. 332, § 16; Laws, 2000, ch. 621, § 6; Laws, 2004, ch. 450, § 2, eff from and after passage (approved Apr. 28, 2004).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Regulation or licensing of business selling motor vehicles. 57 A.L.R.2d 1265.

§ 63-19-56. Commissioner authorized to examine persons suspected of conducting business requiring a license.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required by this chapter.

HISTORY: Laws, 2000, ch. 621, § 7; Laws, 2004, ch. 450, § 3, eff from and after passage (approved Apr. 28, 2004).

§ 63-19-57. Liability of licensees.

(1) A licensee under this chapter shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this chapter, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

HISTORY: Laws, 1997, ch. 332, § 11, eff from and after passage (approved March 17, 1997).

CHAPTER 21.

MOTOR VEHICLE TITLES

Article 1. General Provisions. 63-21-1
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ARTICLE 1.

GENERAL PROVISIONS.

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§ 63-21-1. Short title.

This chapter may be cited as “The Mississippi Motor Vehicle and Manufactured Housing Title Law.”

HISTORY: Codes, 1942, § 8125-21; Laws, 1968, ch. 531, § 1; Laws, 1999, ch. 556, § 1, eff from and after July 1, 1999.

Cross References — Exceptions on gross weight of short wheelbase trucks registered with state tax commission, see § 63-5-34.

Participation of county tax collectors in automated motor vehicle title registration system, see § 63-21-18.

Comparable Laws from other States — Alabama Code, §§ 32-8-1 through 32-8-88.

Georgia Code Annotated, §§ 40-3-1 through 40-3-95.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 29 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 96 et seq.

§ 63-21-3. Administration.

The terms and provisions of this chapter shall be administered by the Department of Revenue. The Department of Revenue shall have charge of all the affairs of administering the laws of the state relative to vehicle registration and titling and manufactured housing titling as hereinafter provided and may employ such administrative and clerical assistance, material and equipment as may be necessary to enable it to speedily, completely and efficiently perform the duties as outlined in this chapter.

HISTORY: Codes, 1942, § 8125-22; Laws, 1968, ch. 531, § 2; Laws, 1999, ch. 556, § 2; Laws, 2009, ch. 492, § 123, eff from and after July 1, 2010.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the Department of Revenue and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

§ 63-21-5. Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section except where the context clearly indicates a different meaning:

(a) "State Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Dealer" means every person engaged regularly in the business of buying, selling or exchanging motor vehicles, trailers, semitrailers, trucks, tractors or other character of commercial or industrial motor vehicles in this state, and having in this state an established place of business as defined in Section 27-19-303, Mississippi Code of 1972. The term "dealer" shall also mean every person engaged regularly in the business of buying, selling or exchanging manufactured housing in this state, and licensed as a dealer of manufactured housing by the Mississippi Department of Insurance.

(c) "Designated agent" means each county tax collector in this state who may perform his duties under this chapter either personally or through any of his deputies, or such other persons as the Department of Revenue may designate. The term shall also mean those "dealers" as herein defined and/or their officers and employees and other persons who are appointed by the Department of Revenue in the manner provided in Section 63-21-13, Mississippi Code of 1972, to perform the duties of "designated agent" for the purposes of this chapter.

(d) "Implement of husbandry" means every vehicle designed and adapted exclusively for agricultural, horticultural or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(e) "Vehicle identification number" means the numbers and letters on a vehicle, manufactured home or mobile home designated by the manufacturer or assigned by the Department of Revenue for the purpose of identifying the vehicle, manufactured home or mobile home.

(f) "Lien" means every kind of written lease which is substantially equivalent to an installment sale or which provides for a right of purchase; conditional sale; reservation of title; deed of trust; chattel mortgage; trust receipt; and every other written agreement or instrument of whatever kind or character whereby an interest other than absolute title is sought to be held or given on a motor vehicle, manufactured home or mobile home.

(g) "Lienholder" means any natural person, firm, copartnership, association or corporation holding a lien as herein defined on a motor vehicle, manufactured home or mobile home.

(h) "Manufactured housing" or "manufactured home" means any structure, transportable in one or more sections, which in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such terms shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USCS, Section 5401.

(i) "Manufacturer" means any person regularly engaged in the business of manufacturing, constructing or assembling motor vehicles, manufactured homes or mobile homes, either within or without this state.

(j) "Mobile home" means any structure, transportable in one or more sections, which in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein and manufactured prior to June 15, 1976. Any mobile home designated as realty on or before July 1, 1999, shall continue to be designated as realty so that a security interest will be made by incorporating such mobile home in a deed of trust.

(k) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a farm tractor, personal delivery device and electric bicycle.

(*l*) "Motor vehicle" means every automobile, motorcycle, mobile trailer, semitrailer, truck, truck tractor, trailer and every other device in, upon, or by which any person or property is or may be transported or drawn upon a public highway which is required to have a road or bridge privilege license, except such as is moved by animal power or used exclusively upon stationary rails or tracks, and excepting electric bicycles and personal delivery devices.

(m) "New vehicle" means a motor vehicle, manufactured home or mobile home which has never been the subject of a first sale for use.

(n) "Used vehicle" means a motor vehicle, manufactured home or mobile home that has been the subject of a first sale for use, whether within this state or elsewhere.

(o) "Owner" means a person or persons holding the legal title of a vehicle, manufactured home or mobile home; in the event a vehicle, manufactured home or mobile home is the subject of a deed of trust or a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the grantor in the deed of trust, mortgagor, conditional vendee or lessee, the grantor, mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this chapter.

(p) "Person" includes every natural person, firm, copartnership, association or corporation.

(q) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, boats or structural members capable generally of sustaining themselves as beams between the supporting connections.

(r) "Security agreement" means a written agreement which reserves or creates a security interest.

(s) "Security interest" means an interest in a vehicle, manufactured home or mobile home reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions.

(t) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to: ditch-digging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power shovels and draglines, and self-propelled cranes, vehicles so constructed that they exceed eight (8) feet in width and/or thirteen (13) feet six (6) inches in height, and earth-moving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(u) "Nonresident" means every person who is not a resident of this state.

(v) "Current address" means a new address different from the address shown on the application or on the certificate of title. The owner shall within thirty (30) days after his address is changed from that shown on the application or on the certificate of title notify the department of the change of address in the manner prescribed by the department.

(w) "Odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary instrument designed to be reset by the operator of the motor vehicle for the purpose of recording the distance traveled on trips.

(x) "Odometer reading" means the actual cumulative distance traveled disclosed on the odometer.

(y) "Odometer disclosure statement" means a statement certified by the owner of the motor vehicle to the transferee or to the department as to the odometer reading.

(z) "Mileage" means actual distance that a vehicle has traveled.

(aa) "Trailer" means every vehicle other than a "pole trailer" as defined in this chapter without motive power designed to be drawn by another vehicle and attached to the towing vehicle for the purpose of hauling goods or products. The term "trailer" shall not refer to any structure, transportable in one or more sections regardless of size, when erected on site, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein regardless of the date of manufacture.

(bb) "Salvage mobile home" or "salvage manufactured home" means a mobile home or manufactured home for which a certificate of title has been issued that an insurance company obtains from the owner as a result of paying a total loss claim resulting from collision, fire, flood, wind or other occurrence. The term "salvage mobile home" or "salvage manufactured home" does not mean or include and is not applicable to a mobile home or manufactured home that is twenty (20) years old or older.

(cc) "Salvage certificate of title" means a document issued by the department for a salvage mobile home or salvage manufactured home as defined in this chapter.

(dd) "All-terrain vehicle" means a motor vehicle that is designed for off-road use and is not required to have a motor vehicle privilege license. The term "all-terrain vehicle" shall not include electric bicycles.

HISTORY: Codes, 1942, § 8125-23; Laws, 1968, ch. 531, § 3; Laws, 1986, ch. 328, § 1; Laws, 1989, ch. 369, § 1; Laws, 1999, ch. 396, § 1; Laws, 1999, ch. 556, § 3; Laws, 2005, ch. 335, § 1; Laws, 2006, ch. 422, § 1; Laws, 2009, ch. 492, § 124, eff from and after July 1, 2010; Laws, 2021, ch. 355, § 11, eff from and after July 1, 2021; Laws, 2022, ch. 439, § 11, eff from and after July 1, 2022.

Joint Legislative Committee Note — Section 1 of ch. 396, Laws, 1999, effective from and after July 1, 1999 (approved March 16, 1999), amended this section. Section 3 of ch. 556, Laws, 1999, effective July 1, 1999 (approved April 21, 1999), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 556, Laws, 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2021 amendment, in (k), added "and electric bicycle" at the end; in (*l*), added "and excepting electric bicycles" at the end; and in (dd), added the last sentence.

The 2022 amendment inserted "personal delivery device" in (k) and "personal delivery devices" in (*l*); and made a minor punctuation change.

Cross References — Department of Revenue generally, see §§ 27-3-1 et seq.

Application of mandatory use of safety seat belts to farm vehicles, see § 63-2-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Proceeds

1. In general.

Heirs' argument that a decedent's girlfriend failed to establish the elements of an inter vivos gift by clear and convincing evidence failed because the burden of proof was on the heirs to disprove her rights to a truck; the girlfriend had full ownership rights of the truck from the time of the title application and when it was issued from the State Tax Commission because the truck was titled to her and the decedent. Amos v. Brown (In re Estate of Brown), 293 So. 3d 851, 2019 Miss. App. LEXIS 585 (Miss. Ct. App. 2019).

Creditor, a vehicle dealer, exercised control over debtor's vehicle in violation of the automatic stay by refusing to furnish him with an application for a new certificate of title as required by Mississippi Motor Vehicle and Manufactured Housing Title Law, even though debtor's counsel made him aware of the bankruptcy filing and automatic stay. Creditor's passive act of holding on to the existing certificate of title prevented debtor from lawfully driving the vehicle, which had the same effect as if creditor had repossessed the vehicle pre-petition and refused to return it post-petition. Parker v. Smith (In re Parker), 2014 Bankr. LEXIS 58 (Bankr. S.D. Miss. Jan. 6, 2014).

Mississippi Motor Vehicle and Manufactured Housing Title Law did not apply to a dispute regarding the payment of several loans secured by trucks because the Uniform Commercial Code's exclusions under former Miss. Code Ann. § 75-9-104(c) (now Miss. Code Ann. § 75-9-109(d)(2)) did not cover automobiles. Trustmark Nat'l Bank v. Barnard, 930 So. 2d 1281, 2006 Miss. App. LEXIS 437 (Miss. Ct. App. 2006).

Definition of "owner" in Motor Vehicle Title Law establishes prima facie case of ownership, for purposes of innocent owner defense to forfeiture proceeding; this presumption is rebuttable. One Ford Mustang Convertible v. State ex rel. Clay County Sheriff's Dep't, 676 So. 2d 905, 1996 Miss. LEXIS 311 (Miss. 1996).

In an action in which the purchaser of a truck alleged that the seller had represented a used truck as a new one in violation of Mississippi's Consumer Protection Act (§§ 75-24-1 et seq.) and the Mississippi Motor Vehicle Commission Law (§§ 63-17-51 et seq.), the trial judge did not err in finding, as a matter of law, that the truck was new, even though a third party had previously attempted to purchase the truck but had returned it one week after driving it home, where no title had ever been issued to the third party, and the purchaser was told at the time of the sale that there were 1,790 miles on the odometer because the truck had either been test driven or had been the subject of a sale that had fallen through. Hernandez v. Vickery Chevrolet-Oldsmobile Co., 652 So. 2d 179, 1995 Miss. LEXIS 154 (Miss. 1995).

In an action in which the purchaser of a truck alleged that the seller had represented a used truck as a new one in violation of Mississippi's Consumer Protection Act (§§ 75-24-1 et seq.) and the Mississippi Motor Vehicle Commission Law (§§ 63-17-51 et seq.), the trial court did not err in failing to consider § 75-2-401(2), which pertains to passing of title, since the issue was whether the truck was new or used when it was purchased and this question could be answered without exceeding the confines of the Motor Vehicle Commission Law and the Motor Vehicle Title Law (§§ 63-21-1 et seq). Hernandez v. Vickery Chevrolet-Oldsmobile Co., 652 So. 2d 179, 1995 Miss. LEXIS 154 (Miss. 1995).

The statutory requirement that an application for a certificate of title must include the vehicle owner's name was satisfied by an application that listed a sole proprietorship as owner since the term "firm," as used in the definition of the term "person" meant a sole proprietorship; thus, the fact that title was so held did not defeat perfection of a lienholder's security interest in the vehicle. Further, a failure to list all of the facts for an application under § 63-21-15 does not defeat the perfection of a security interest under § 63-21-43, which does not require that the owner's name be listed. In re Williams, 608 F.2d 1015, 1979 U.S. App. LEXIS 9384 (5th Cir. Miss. 1979).

2. Proceeds

Assuming the creditors had valid, perfected security interests in the trucks, lease payments for the trucks were proceeds of the collateral under Nevada law as although Nevada deferred to Mississippi law with respect to the perfection of a security interest in the trucks, the Mississippi Motor Vehicle and Manufactured Housing Title Law did not provide a method for perfection of the proceeds of a vehicle; the payments were proceeds of the trucks and any perfection of security interests in the trucks continued automatically in the payments, but a fact issue remained as to whether the security interest in the cash proceeds were identifiable and continued beyond the 20th day after attachment. Nat'l Truck Funding LLC v. Yolo Capital Inc. (In re Nat'l Truck Funding LLC), 589 B.R. 294, 2018 Bankr. LEXIS 182 (Bankr. S.D. Miss. 2018).

OPINIONS OF THE ATTORNEY GENERAL

Question whether a 4-wheel recreational vehicle, such as a Honda, fits the category of implement of husbandry is a question of fact and would be answered by determining the design and adaption of the vehicle. Magee, July 22, 2005, A.G. Op. 05-0344.

If a John Deere Gator is an implement of husbandry it may be driven temporarily on the streets of a city. If not, it may be used for general maintenance, but not driven on the streets. Graves, Apr. 14, 2006, A.G. Op. 06-0110.

RESEARCH REFERENCES

ALR.

Comment Note.–Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile. 74 A.L.R.3d 739.

§ 63-21-7. Administration.

(1) The State Tax Commission shall prescribe and provide suitable forms of applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out the provisions of this chapter.

(2) The State Tax Commission may:

(a) Promulgate such rules and regulations deemed by it to be appropriate to implement the provisions of the chapter.

(b) Make necessary investigations to procure information required to carry out the provisions of this chapter.

(c) Assign a new vehicle identification number to a vehicle if it has none, or if its vehicle identification number is destroyed or obliterated, and then shall issue a new certificate of title showing the new identifying number or make an appropriate endorsement on the original certificate.

(3) The State Tax Commission shall make available information concerning the status of a title on any vehicle as reflected by the records in a manner as prescribed by the State Tax Commission. Such information supplied by the State Tax Commission shall be considered official only if in writing. The State Tax Commission shall charge the fees as set forth in Section 63-21-63. However, no fee shall be charged Mississippi law enforcement agencies or law

enforcement agencies of any other state when such state furnishes like or similar information without charge to the State Tax Commission or other Mississippi law enforcement agencies.

HISTORY: Codes, 1942, § 8125-48; Laws, 1968, ch. 531, § 28; Laws, 2001, ch. 596, § 65, eff from and after July 1, 2001.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the Department of Revenue and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

JUDICIAL DECISIONS

1. In general.

A bank that was the first lienholder on a car that was demolished in a collision was entitled to judgment against the negligent driver of the other car and her insurer for the amount of the lien at the time of the accident where the insurer had entered into a settlement agreement and release with the bank's debtor, under the terms of which the insurer sold the wrecked car as salvage, without first making an effort to inspect the certificate of title on the vehicle, as permitted by law; such failure to investigate was unreasonable under the circumstances, wherein a vehicle was demolished leaving the residue of salvage value only, and the insurer and its insured thus settled the claim with constructive notice of the bank's lien. Nationwide Ins. Co. v. Bank of Forest, 368 So. 2d 1273, 1979 Miss. LEXIS 2247 (Miss. 1979).

OPINIONS OF THE ATTORNEY GENERAL

The State Tax Commission has responsibility for the assignment of a new vehicle identification number as authorized by the statute. Mitchell, III, April 7, 2000, A.G. Op. #2000-0157.

§ 63-21-9. Requirement of certificate of title.

(1) Except as provided in Section 63-21-11, every owner of a motor vehicle as defined in this chapter, which is in this state and which is manufactured or assembled after July 1, 1969, or which is the subject of first sale for use after July 1, 1969, and every owner of a manufactured home as defined in this chapter, which is in this state and which is manufactured or assembled after July 1, 1999, or which is the subject of first sale for use after July 1, 1999, shall make application to the State Tax Commission for a certificate of title with the following exceptions:

(a) Voluntary application for title may be made for any model motor vehicle which is in this state after July 1, 1969, and for any model manufactured home or mobile home which is in this state after July 1, 1999, and any person bringing a motor vehicle, manufactured home or mobile home into this state from a state which requires titling shall make application for title to the State Tax Commission within thirty (30) days thereafter.

(b) After July 1, 1969, any dealer, acting for himself, or another, who sells, trades or otherwise transfers any new or used vehicle as defined in this chapter, and after July 1, 1999, any dealer, acting for himself, or another, who sells, trades or otherwise transfers any new or used manufactured home or mobile home as defined in this chapter, or any designated agent, shall furnish to the purchaser or transferee, without charge for either application or certificate of title, an application for title of said vehicle, manufactured home or mobile home and cause to be forwarded to the State Tax Commission any and all documents required by the commission to issue certificate of title to the purchaser or transferee. The purchaser or transferee may then use the duplicate application for title as a permit to operate vehicle as provided in Section 63-21-67, until certificate of title is received.

(2)(a) Voluntary application for title may be made for any model all-terrain vehicle which is in this state.

(b) A dealer who sells, trades or otherwise transfers any new or used all-terrain vehicles as defined in this chapter, may furnish to the purchaser or transferee, without charge for either application or certificate of title, an application for title of said vehicle, and cause to be forwarded to the State Tax Commission any and all documents required by the commission to issue certificate of title to the purchaser or transferee.

(3) Any dealer, acting for himself or another who sells, trades or otherwise transfers any vehicle, manufactured home or mobile home required to be titled under this chapter who does not comply with the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined a sum not exceeding Five Hundred Dollars ($500.00).

HISTORY: Codes, 1942, § 8125-24; Laws, 1968, ch. 531, § 4; Laws, 1970, ch. 483, § 1; Laws, 1979, ch. 333; Laws, 1999, ch. 556, § 4; Laws, 2005, ch. 335, § 2, eff from and after July 1, 2005.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the Department of Revenue and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Creditor, a vehicle dealer, exercised control over debtor's vehicle in violation of the automatic stay by refusing to furnish him with an application for a new certificate of title as required by Mississippi Motor Vehicle and Manufactured Housing Title Law, even though debtor's counsel made him aware of the bankruptcy filing and automatic stay. Creditor's passive act of holding on to the existing certificate of title prevented debtor from lawfully driving the vehicle, which had the same effect as if creditor had repossessed the vehicle pre-petition and refused to return it post-petition. Parker v. Smith (In re Parker), 2014 Bankr. LEXIS 58 (Bankr. S.D. Miss. Jan. 6, 2014).

Although dealers might have sold automobiles to each other, without complying with this section, to suit their own convenience, the requirements of the statute were applicable to such sales, and they were not exempt under § 63-21-11(b). Rogers v. Hall, 330 So. 2d 573, 1976 Miss. LEXIS 1851 (Miss. 1976).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 30, 31.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic §§ 33:21 et seq. (obtaining certificate of title or registration).

CJS.

60 C.J.S., Motor Vehicles §§ 86-90.

§ 63-21-11. Exceptions to requirement of certificate of title.

(1) No certificate of title need be obtained for:

(a) A vehicle, manufactured home or mobile home owned by the United States or any agency thereof;

(b) A vehicle, manufactured home or mobile home owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration, or a vehicle used by a manufacturer solely for testing;

(c) A vehicle, manufactured home or mobile home owned by a nonresident of this state and not required by law to be registered in this state;

(d) A vehicle regularly engaged in the interstate transportation of persons or property for which a currently effective certificate of title has been issued in another state;

(e) A vehicle moved solely by animal power;

(f) An implement of husbandry;

(g) Special mobile equipment;

(h) A pole trailer;

(i) Utility trailers of less than five thousand (5,000) pounds gross vehicle weight;

(j) A manufactured home with respect to which the requirements of subsections (1) through (5) of Section 63-21-30, as applicable, have been satisfied unless with respect to the same manufactured home or mobile home there has been recorded an affidavit of severance pursuant to subsection (6) of Section 63-21-30.

(2) Nothing in this section shall prohibit the issuance of a certificate of title to the nonresident owner of an all-terrain vehicle that is purchased in this state.

HISTORY: Codes, 1942, § 8125-25; Laws, 1968, ch. 531, § 5; Laws, 1987, ch. 338, § 1; Laws, 1999, ch. 556, § 5; Laws, 2005, ch. 335, § 3, eff from and after July 1, 2005; Laws, 2018, ch. 401, § 3, eff from and after January 1, 2019.

RESEARCH REFERENCES

ALR.

What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle. 27 A.L.R.4th 843.

§ 63-21-13. Designated agents of Department of Revenue generally.

(1) The tax collector of each of the several counties in this state shall by virtue of his office be a designated agent of the Department of Revenue. Such tax collectors may perform their duties under this chapter either personally or through any of their deputies.

(2) Every licensed dealer as defined in this chapter including wholesale dealers, shall be a designated agent of the Department of Revenue. Such dealers may perform their duties under this chapter either personally or through any of their officers or employees. Such dealers or persons shall enter into a bond with a surety company authorized to do business in this state as surety thereon, payable to the State of Mississippi in a sum to be determined by the department, but in no case to be less than Fifteen Thousand Dollars ($15,000.00), conditioned for the faithful performance of their duties under this chapter.

(3) The Department of Revenue may appoint persons other than licensed dealers as its designated agents, provided that such appointees shall enter into a bond with a surety company authorized to do business in this state as surety thereon, payable to the State of Mississippi in a sum to be determined by the commission, but in no case to be less than Five Thousand Dollars ($5,000.00), conditioned for the faithful performance of their duties under this chapter.

HISTORY: Codes, 1942, § 8125-26; Laws, 1968, ch. 531, § 6; Laws, 1970, ch. 483, § 2; Laws, 1993, ch. 539, § 1; Laws, 2015, ch. 400, § 1, eff from and after July 1, 2015.

Cross References — Exemption of designated agents from requirement that dealers file quarterly reports of vehicles that have been wholesaled with motor vehicle comptroller, see § 27-19-316.

Provision that, for purposes of this chapter, the term "designated agent" includes officers and employees of dealers appointed to perform the duties of designated agent under this section, see § 63-21-5.

JUDICIAL DECISIONS

1. In general.

By executing and filing with the comptroller a surety bond in the amount of $5,000 obligating itself that in the event an automobile dealer did not fulfill his duties as "designated agent" under the Mississippi Motor Vehicle Title Law it would be liable to the extent of the amount of the bond, a surety company made itself liable to any member of the public to the extent of the amount of the bond for damages resulting from the dealer's failure to fulfill his statutory obligations as a dealer to furnish a buyer of a car with a clear title to a vehicle. Thus, upon the dealer's failure to provide a buyer with a clear title to a vehicle, the dealer became liable to the buyer for whatever damages were caused from such failure, and the surety was also liable up to $5,000. The surety, in expressing its willingness to be the buyer's surety on a bond to be executed under the provisions of § 63-21-23, did not fulfill its obligations under the bond it executed with respect to the dealer pursuant to § 63-21-13, since the buyer would have had a contingent liability as principle under the bond for any damages caused to others having some claim of ownership in the car. McBride v. Aetna

Casualty & Surety Co., 583 So. 2d 974, 1991 Miss. LEXIS 478 (Miss. 1991).

§ 63-21-15. Application for certificate of title; expedited title processing.

(1) The application for the certificate of title of a vehicle, manufactured home or mobile home in this state shall be made by the owner to a designated agent, on the form the Department of Revenue prescribes, and shall contain or be accompanied by the following, if applicable:

(a) The name, driver's license number, if the owner has been issued a driver's license, current residence and mailing address of the owner;

(b)(i) If a vehicle, a description of the vehicle, including the following data: year, make, model, vehicle identification number, type of body, the number of cylinders, odometer reading at the time of application, and whether new or used; and

(ii) If a manufactured home or mobile home, a description of the manufactured home or mobile home, including the following data: year, make, model number, serial number and whether new or used;

(c) The date of purchase by applicant, the name and address of the person from whom the vehicle, manufactured home or mobile home was acquired, and the names and addresses of any lienholders in the order of their priority and the dates of their security agreements;

(d) In connection with the transfer of ownership of a manufactured home or mobile home sold by a sheriff's bill of sale, a copy of the sheriff's bill of sale;

(e)(i) An odometer disclosure statement made by the transferor of a motor vehicle. The statement shall read:

"Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fine and/or imprisonment.

I state that the odometer now reads ____________ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described herein, unless one (1) of the following statements is checked:

____________ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

____________ (2) I hereby certify that the odometer reading is not the actual mileage. WARNING-ODOMETER DISCREPANCY!"

(ii) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title, which form shall be prescribed and furnished by the Department of Revenue. This written disclosure must be signed by the transferor and transferee, including the printed name of both parties.

Notwithstanding the requirements above, the following exemptions as to odometer disclosure shall be in effect:

1. A vehicle having a gross vehicle weight rating of more than sixteen thousand (16,000) pounds.

2. A vehicle that is not self-propelled.

3. A vehicle that is twenty (20) years old or older.

4. A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

5. A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

(iii) Any person who knowingly gives a false statement concerning the odometer reading on an odometer disclosure statement shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of up to One Thousand Dollars ($1,000.00) or imprisonment of up to one (1) year, or both, at the discretion of the court. These penalties shall be cumulative, supplemental and in addition to the penalties provided by any other law; and

(f) For previously used manufactured homes and mobile homes that previously have not been titled in this state or any other state, a disclosure statement shall be made by the owner of the manufactured home or mobile home applying for the certificate of title. That statement shall read:

"I state that the previously used manufactured home or mobile home owned by me for which I am applying for a certificate of title, to the best of my knowledge:

____________ (1) Has never been declared a total loss due to flood damage, fire damage, wind damage or other damage; or
____________ (2) Has previously been declared a total loss due to:
____________ (a) Collision;
____________ (b) Flood;
____________ (c) Fire;
____________ (d) Wind;
____________ (e) Other (please describe): ____________."

(2) The application shall be accompanied by such evidence as the Department of Revenue reasonably requires to identify the vehicle, manufactured home or mobile home and to enable the Department of Revenue to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the vehicle, manufactured home or mobile home and whether the applicant is liable for a use tax as provided by Sections 27-67-1 through 27-67-33.

(3) If the application is for a vehicle, manufactured home or mobile home purchased from a dealer, it shall contain the name and address of any lienholder holding a security interest created or reserved at the time of the sale and the date of his security agreement and it shall be signed by the dealer as well as the owner. The designated agent shall promptly mail or deliver the application to the Department of Revenue.

(4) If the application is for a new vehicle, manufactured home or mobile home, it shall contain the certified manufacturer's statement of origin showing

proper assignments to the applicant and a copy of each security interest document.

(5) Each application shall contain or be accompanied by the certificate of a designated agent that the vehicle, manufactured home or mobile home has been physically inspected by him and that the vehicle identification number and descriptive data shown on the application, pursuant to the requirements of subsection (1)(b) of this section, are correct, and also that he has identified the person signing the application and witnessed the signature. If the application is to receive a branded title for a vehicle for which a salvage certificate of title has been issued, the application shall be accompanied by a sworn affidavit that the vehicle complies with the requirements of this section, Section 63-21-39 and the regulations promulgated by the Department of Revenue under Section 63-21-39.

(6)(a) If the application is for a first certificate of title on a vehicle, manufactured home or mobile home other than a new vehicle, manufactured home or mobile home, then the application shall conform with the requirements of this section except that in lieu of the manufacturer's statement of origin, the application shall be accompanied by a copy of the bill of sale of said motor vehicle, manufactured home or mobile home whereby the applicant claims title or in lieu thereof, in the case of a motor vehicle, certified copies of the last two (2) years' tag and tax receipts or in lieu thereof, in any case, such other information the Department of Revenue may reasonably require to identify the vehicle, manufactured home or mobile home and to enable the Department of Revenue to determine ownership of the vehicle, manufactured home or mobile home and the existence or nonexistence of security interest in it. If the application is for a vehicle, manufactured home or mobile home last previously registered in another state or country, the application shall also be accompanied by the certificate of title issued by the other state or country, if any, properly assigned.

(b) A person may apply for a certificate of title to a vehicle lacking proper documentation if the vehicle is at least thirty (30) years old and the person submits a certificate of ownership signed under penalty of perjury on a form prescribed by the Department of Revenue.

(7) If the application is for a vehicle the owner does not intend to drive, the owner need not purchase a license tag in order to receive a certificate of title, so long as the application contains an affidavit attesting to the owner's intent that the vehicle not be operated on the highways of this state until and unless the owner applies for a license tag.

(8) Every designated agent within this state shall, no later than the next business day after they are received by him, forward to the Department of Revenue by mail, postage prepaid, the originals of all applications received by him, together with such evidence of title as may have been delivered to him by the applicants.

(9) An application for certificate of title and information to be placed on an application for certificate of title may be transferred electronically as provided in Section 63-21-16.

(10) The Department of Revenue shall issue a certificate of title or any other document applied for under this chapter to the designated agent, owner or lienholder of the motor vehicle or of the manufactured home or mobile home, as appropriate, not more than thirty (30) days after the application and required fee prescribed under Section 63-21-63 or Section 63-21-64 are received unless the applicant requests expedited processing under subsection (11) of this section.

(11)(a) The Department of Revenue shall establish an expedited processing procedure for the receipt of applications and the issuance of certificates of title and any other documents issued under this chapter, except a replacement certificate of title as provided under Section 63-21-27(2), for motor vehicles and for manufactured homes or mobile homes. Any designated agent, lienholder or owner requesting the issuance of any such document, at his or her option, shall receive such expedited processing upon payment of a fee in the amount of Thirty Dollars ($30.00). Such fee shall be in addition to the fees applicable to the issuance of any such documents under Section 63-21-63 and Section 63-21-64.

(b) When expedited title processing is requested, the applicable fees are paid and all documents and information necessary for the Department of Revenue to issue the certificate of title or other documents applied for are received by the department, then the department shall complete processing of the application and issue the title or document applied for within seventy-two (72) hours of the time of receipt, excluding weekends and holidays.

HISTORY: Codes, 1942, § 8125-27; Laws, 1968, ch. 531, § 7; Laws, 1986, ch. 328, § 2; Laws, 1989, ch. 369, § 2; Laws, 1991, ch. 575, § 1; Laws, 1996, ch. 539, § 3; Laws, 1999, ch. 556, § 6; Laws, 2004, ch. 557, § 1; Laws, 2006, ch. 466, § 2; Laws, 2006, ch. 563, § 8, eff from and after July 1, 2006; Laws, 2018, ch. 358, § 1, eff from and after July 1, 2018; Laws, 2020, ch. 324, § 1, eff from and after January 1, 2021; Laws, 2020, ch. 335, § 1, eff from and after passage (approved June 23, 2020); Laws, 2021, ch. 437, § 1, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 1 of Chapter 324, Laws of 2020, effective from and after January 1, 2021 (approved June 22, 2020), amended this section. Section 1 of Chapter 335, Laws of 2020, effective from and after passage (approved June 23, 2020), also amended this section As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the October 19, 2020, meeting of the Committee.

Amendment Notes — The 2021 amendment added (6)(b).

Cross References — Application for certificate of title for vehicle which has been issued a salvage certificate of title, see § 63-21-39.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Owner's name.

1. In general.

Chancellor's order and the execution on a truck in partial satisfaction of the judgment in favor of a mall security company that brought a suit for payment of pre-receivership services was proper because the title to the truck reflected no lienholder. Thus, when the security company obtained its judgment against the mall, it became a judgment creditor with a priority claim over other creditors to the truck. Lend Lease Asset Mgmt., L.P. v. Cobra Sec., Inc., 912 So. 2d 471, 2005 Miss. LEXIS 674 (Miss. 2005).

Although dealers might have sold automobiles to each other, without complying with this section, to suit their own convenience, the requirements of the statute were applicable to such sales, and they were not exempt under § 63-21-11(b). Rogers v. Hall, 330 So. 2d 573, 1976 Miss. LEXIS 1851 (Miss. 1976).

2. Owner's name.

The statutory requirement that an application for a certificate of title must include the vehicle owner's name was satisfied by an application that listed a sole proprietorship as owner since the term "firm," as used in the definition of the term "person" meant a sole proprietorship; thus, the fact that title was so held did not defeat perfection of a lienholder's security interest in the vehicle. Further, a failure to list all of the facts for an application under § 63-21-15 does not defeat the perfection of a security interest under § 63-21-43, which does not require that the owner's name be listed. GMAC v. Pongetti, 608 F.2d 1015 (5th Cir. 1979).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Products Liability, Form 115.1 (complaint, petition, or declaration against automobile dealership and salesperson, misrepresentation in sale of used automobile used automobile sold as new automobile, fraudulent concealment of disconnection of odometer).

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic §§ 33:21-33:32.

§ 63-21-16. Electronic transmittal of information by banks and other lending institutions; duties of institutions with respect to applications for certificates of title; entry of applications on statewide title registration system; addition of second lienholder to certificate of title; applications for certificates of title after assignment of liens; issuance of new certificate of title by Department of Revenue; connection of institutions to title registration system; penalties for noncompliance with statute or regulations by institutions; conditions for issuance of certificate of title to manufactured or mobile home for which title has been retired to real property.

(1) All designated agents appointed by the Department of Revenue under Section 63-21-13, Mississippi Code of 1972, may electronically transmit to the

Department of Revenue information entered by them on applications for a certificate of title given in connection with the sale or transfer of a motor vehicle, manufactured home or mobile home or a loan for which the owner's motor vehicle, manufactured home or mobile home is pledged to that institution as collateral for the loan. The format and the data required to be transmitted shall be established by the Department of Revenue. Transmission of data shall meet minimum criteria and edits established by the Department of Revenue equal to any edit presently existing in the statewide title registration system, or as may be established, to which the county tax collectors shall also conform. All data transmitted must successfully pass edits established by the Department of Revenue, including lienholder name, mailing address and lienholder account number assigned to a lienholder by the Department of Revenue to identify the lienholder, for the purpose of causing the data to appear in the certificate of title for which the application is made.

(2) It shall be the responsibility of the designated agent to verify all data before it is electronically transmitted. It shall also be the responsibility of the designated agent to ensure that the required certification of designated agent and the certification of statement of facts that are contained on the application for certificate of title appear above the signatures of both the owner and the authorized representative of the designated agent. Data which cannot be transmitted because of error shall be corrected by the designated agent when the statewide title registration system indicates that the data is erroneous or is not valid for the purposes of titling the motor vehicle, manufactured home or mobile home or for transfer of the data.

(3) When an institution has agreed to loan money for the purchase of a motor vehicle, manufactured home or mobile home, the institution shall complete an application for certificate of title or require the borrower to provide to the institution the copy of the application for certificate of title contained in the application packet which is designated "Lienholder's Copy" according to provisions of the Motor Vehicle and Manufactured Housing Title Law, which the owner will receive from the county tax collector or any designated agent upon completion of the application for title and registration process.

(4) An application for certificate of title originating from a designated agent shall be entered on the statewide title registration system by the originating lending institution when the transaction is for the purpose of perfecting the institution's interest in a vehicle, manufactured home or mobile home currently owned or purchased by the applicant, in connection with application for certificate of title or the purchase of a license tag or both.

(5) When an institution in this state adds a second lien on a certificate of title in possession of a first lienholder institution in this state, the second lienholder institution seeking to be shown on the certificate of title shall:

(a) Prepare the application for certificate of title in accordance with the requirements of Sections 63-21-15 and 63-21-45(1)(c);

(b) Obtain all required signatures; and

(c) Forward the completed application for certificate of title to the first lienholder together with any necessary remittance advice, a check for the title fee payable to the Department of Revenue and a cover letter to the first lienholder requesting that the first lienholder attach the certificate of title to the required documents sent by the second lienholder and then forward the application, certificate of title and required documents to the Department of Revenue.

(6) Upon receipt of the application for certificate of title from the second lienholder institution to record the second lien, the first lienholder institution shall compare the data contained in the application for certificate of title to the information contained in the original certificate of title. If the first lienholder institution is satisfied as to the ownership, accuracy and order of priority of liens as shown in the application, it shall enter the data contained on the application for certificate of title prepared by the second lienholder on the statewide title registration system, including the designated agent number of the second lienholder. After entering the data from the application for certificate of title, the first lienholder institution shall immediately forward the application for certificate of title with the certificate of title attached to the application, the remittance advice and the second lienholder's check for the title fee to the Department of Revenue within three (3) working days.

(7) In an assignment of lien pursuant to Section 63-21-47, the assignee shall receive the notice of assignment along with the current title attached and with the assignors interest open. The assignee lienholder shall prepare an application for certificate of title according to the notice of assignment, showing the assignee institution as the lienholder, and then shall electronically transmit the data to the Department of Revenue. The completed application shall be forwarded to the Department of Revenue within three (3) working days.

(8) The Department of Revenue, upon receipt of applications for certificate of title, shall verify the data by accessing it on the statewide title registration system by the title application control number appearing on the application for title. After receiving verification that is satisfactory to the Department of Revenue that the data necessary for the issuance of a new certificate of title exists, the Department of Revenue shall issue a new certificate of title that records the interests of all the parties named in the application for certificate of title.

(9) Designated agents shall be connected to the statewide title registration system for the purpose of electronic transfer of applications for certificate of title data in the order of priority established by the Department of Revenue.

(10) If a participating designated agent fails to comply with the provisions of this section or the rules adopted by the Department of Revenue to implement this section, the Department of Revenue may impose a penalty of Twenty-five Dollars ($25.00) for each instance of noncompliance. Any penalty imposed under this section not paid within thirty (30) days after a notice is given shall be subject to collection from the bond of the designated agent that is required to be provided under the provisions of Section 63-21-13(3). The penalty provided shall also be assessable, due and collectible from any licensed motor vehicle dealer or manufactured home or mobile home dealer for failure

to accept an application for certificate of title for each and every vehicle, manufactured home or mobile home he sells to a consumer. These penalties shall be cumulative, supplemental and in addition to the penalties provided by any other law.

(11) This section shall apply to all designated agents appointed by the Department of Revenue under Section 63-21-13, that choose to electronically transmit information on applications for certificates of title to the Department of Revenue. This section shall not apply to other designated agents.

(12) Notwithstanding the foregoing, the Department of Revenue shall not issue a certificate of title to a manufactured home or mobile home with respect to which title has been retired to real property under Section 63-21-30 unless with respect to the same manufactured home or mobile home title has been severed from real property pursuant to Section 63-21-30.

HISTORY: Laws, 1996, ch. 539, § 1; Laws, 1997, ch. 458, § 1; Laws, 1999, ch. 396, § 2; Laws, 1999, ch. 556, § 7, eff from and after July 1, 1999; Laws, 2018, ch. 401, § 4, eff from and after January 1, 2019.

Joint Legislative Committee Note — Section 2 of ch. 396, Laws, 1999, effective from and after July 1, 1999 (approved March 16, 1999), amended this section. Section 7 of ch. 556, Laws, 1999, effective July 1, 1999 (approved April 21, 1999), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 556, Laws, 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

§ 63-21-17. Issuance of certificate of title; Department of Revenue to permanently maintain records of certificates of title, affidavits of affixation, manufacturers' certificates of origin, surrendered certificates of title, and affidavits of severance.

(1) The Department of Revenue shall examine each application received and, when satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a certificate of title, shall issue a certificate of title of the vehicle, manufactured home or mobile home on the form prescribed by the department.

(2) The Department of Revenue shall maintain a record of all certificates of title issued for fifteen (15) years from the date of issuance, pursuant to the provisions of this chapter:

(a) Under a distinctive title number assigned to the vehicle, manufactured home or mobile home;

(b) Under the vehicle identification number;

(c) Under the name of the owner; and

(d) In the discretion of the Department of Revenue, by any other method the department determines.

(3) The Department of Revenue shall maintain a record of each affidavit of affixation filed in accordance with subsections (3), (4) and (5) of Section 63-21-30. The record shall state the name and mailing address of each owner of the related manufactured home, the county of recordation, the date of recordation, and the book and page number of each book of records in which there has been recorded an affidavit of affixation under subsections (1) and (2) of Section 63-21-30, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent that such data exists, and any other information the Department of Revenue prescribes.

(4) The Department of Revenue shall maintain a record of each manufacturer's certificate of origin submitted for the purpose of effectuating the retirement of title as provided in Section 63-21-30. The record shall state the name and mailing address of each owner of the manufactured home, the date the manufacturer's certificate of origin was submitted, the county of recordation, the date of recordation, and the book and page number of each book of records in which there has been recorded an affidavit of affixation under subsections (1) and (2) of Section 63-21-30, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent that such data exists, and any other information the Department of Revenue prescribes.

(5) The Department of Revenue shall maintain a record of each certificate of title accepted for surrender as provided in subsection (5) of Section 63-21-30. The record shall state the name and mailing address of each owner of the manufactured home, the date the certificate of title was accepted for surrender, the county of recordation, the date of recordation, and the book and page number of each book of records in which there has been recorded an affidavit of affixation under subsections (1) and (2) of Section 63-21-30, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent that such data exists, and any other information the Department of Revenue prescribes.

(6) The Department of Revenue shall maintain a record of each affidavit of severance filed in accordance with subsection (6) of Section 63-21-30. The record shall state the name and mailing address of each owner of the related manufactured home, the county of recordation, the date of recordation, and the book and page number of each book of records in which there has been recorded an affidavit of severance under subsection (6) of Section 63-21-30, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent that such data exists, and any other information the Department of Revenue prescribes.

(7) Records of affidavits of affixation, submitted manufacturer's certificates of origin, surrendered certificates of title, and affidavits of severance shall be maintained permanently and be subject to public records request. The

records of affidavits of affixation, submitted manufacturer's certificates of origin, and surrendered certificates of title shall include a statement that the manufactured home is real property as provided in subsections (13) and (14) of Section 63-21-30.

HISTORY: Codes, 1942, § 8125-28; Laws, 1968, ch. 531, § 8; Laws, 1999, ch. 556, § 8, eff from and after July 1, 1999; Laws, 2018, ch. 401, § 5, eff from and after January 1, 2019; Laws, 2021, ch. 313, § 1, eff from and after July 1, 2021.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Amendment Notes — The 2021 amendment, in (2), inserted "for fifteen (15) years from the date of issuance."

Cross References — Procedure for permanently retiring title to manufactured or mobile home, see § 63-21-30.

§ 63-21-18. Automated statewide motor vehicle title registration system.

The Mississippi Department of Information Technology Services shall provide equipment for the operation and maintenance of the automated statewide motor vehicle, manufactured housing and mobile home registration system by the State Tax Commission.

The automated statewide motor vehicle, manufactured housing and mobile home registration system shall provide for computer terminals and printers, as authorized by the Mississippi Department of Information Technology Services, to be located in the quantity necessary in each county seat tax collector's office and any other office in which more than fifty percent (50%) of the motor vehicle registrations in the county are made.

All county tax collectors shall participate in such system as it applies to Chapter 19, Title 27; Chapter 51, Title 27; Chapter 21, Title 63; Mississippi Code of 1972, in accordance with rules and regulations promulgated by the State Tax Commission. Such rules and regulations shall provide that counties which have an existing computer system designed to produce registration data may elect to use such existing system to communicate title/registration data to the commission through the computer furnished by the state as hereinabove provided in this section. If the State Tax Commission finds and determines that a county has failed to successfully establish or update title/registration data into the statewide vehicle, manufactured housing and mobile home title/registration system, either through use of equipment supplied by the State Tax Commission or through the interfacing between the network system and county computer equipment, the State Tax Commission shall thereafter cause to be withheld the county's homestead exemption reimbursement monies, except for school districts and municipalities, until such time as the county has complied with this provision. Such monies as are withheld from a county for failure to comply with this provision shall be placed into a special escrow account to be established in the State Treasury. Once the county achieves compliance by successfully establishing or updating title/registration data into the statewide vehicle, manufactured housing and mobile home title/registration system, then the commission shall cause to be released to the county all funds held in escrow on the county's behalf during the period of noncompliance. All interest earned shall accrue to the benefit of the county on any funds placed in an escrow account. Any cost involved in interfacing between existing county computer systems and the state-provided computer shall be paid by the county.

The computer terminals and printers placed in each county tax collector's office may be utilized to provide additional computer functions as authorized by the Mississippi Department of Information Technology Services.

The State Fiscal Officer shall issue his warrants to the State Treasurer for the expenditures for the implementation and maintenance of the system upon requisitions signed by the Chairman of the State Tax Commission, as authorized by the Legislature.

It is the intent of the Legislature that the operation of the statewide motor vehicle, manufactured housing and mobile home title registration system shall be the responsibility of the State Tax Commission.

The State Tax Commission shall provide for the transfer of motor vehicle, manufactured housing and mobile home title and lien registration information to the commission by electronic means from banks and other lending institutions as provided in Section 63-21-18. The Mississippi Department of Information Technology Services shall cooperate with the State Tax Commission in implementing the provisions of Section 63-21-18, and shall provide the State Tax Commission with whatever assistance the commission needs to carry out the provisions of Section 63-21-18.

HISTORY: Laws, 1980, ch. 427, § 1; Laws, 1981, ch. 309, § 4; Laws, 1983, ch. 320, § 1; Laws, 1984, ch. 488, § 302; Laws, 1990, ch. 415, § 3; Laws, 1999, ch. 556, § 9, eff from and after July 1, 1999.

Cross References — Central data processing authority [Mississippi Department of Information Technology Services], see §§ 25-53-1 et seq.

Other powers and duties of the state tax commission, see § 27-3-31.

Withholding of reimbursements of homestead exemption tax loss for tax collector's failure to comply with this section, see § 27-33-41.

Source of revenue for funding the automated statewide motor vehicle title registration system, see § 63-21-65.

RESEARCH REFERENCES

Am. Jur.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

§ 63-21-19. Contents and effect of certificate of title; attachment, etc., of certificate.

(1) Each certificate of title issued by the State Tax Commission shall contain:

(a) The date issued;

(b) The name and current address of the owner;

(c) The names and addresses of the first two (2) lienholders in the order of priority as shown on the application, or if the application is based on a certificate of title as shown on the certificate;

(d) The title number;

(e) A description of the vehicle, manufactured home or mobile home, including the following data, if applicable: year, make, model, vehicle identification number, type of body, number of cylinders, whether new or used, odometer reading, a statement which qualifies mileage according to the odometer disclosure certified by the transferor and, if a new vehicle, the date of the first sale of the vehicle for use; and

(f) Any other data the State Tax Commission prescribes.

(2) Unless security is furnished as provided in subsection (b) of Section 63-21-23, Mississippi Code of 1972, a distinctive certificate of title shall be issued for a vehicle, manufactured home or mobile home last previously registered in another state or country the laws of which do not require that lienholders be named on a certificate of title to perfect their security interests. The certificate shall contain the legend "This vehicle, manufactured home or mobile home may be subject to an undisclosed lien" and may contain any other information the State Tax Commission prescribes. If no notice of a security interest in the vehicle, manufactured home or mobile home is received by the State Tax Commission within four (4) months from the issuance of the distinctive certificate of title, the State Tax Commission shall, upon application and surrender of the distinctive certificate, issue a certificate of title in ordinary form.

(3) The certificate of title shall contain forms for assignment and warranty of title by the owner, and for assignment and warranty of title by a dealer, and may contain forms for applications for a certificate of title by a transferee, the naming of a lienholder and the assignment or release of the security interest of a lienholder.

(4) A certificate of title issued by the State Tax Commission is prima facie evidence of the facts appearing on it.

(5) A certificate of title for a vehicle, manufactured home or mobile home is not subject to garnishment, attachment, execution or other judicial process. However, this paragraph shall not prevent a lawful levy upon the vehicle, manufactured home or mobile home.

HISTORY: Codes, 1942, § 8125-30; Laws, 1968, ch. 531, § 10; Laws, 1986, ch. 328, § 3; Laws, 1989, ch. 369, § 3; Laws, 1999, ch. 556, § 10, eff from and after July 1, 1999.

JUDICIAL DECISIONS

1. Ownership.

Heirs' argument that a decedent's girlfriend failed to establish the elements of an inter vivos gift by clear and convincing evidence failed because the burden of proof was on the heirs to disprove her rights to a truck; the girlfriend had full ownership rights of the truck from the time of the title application and when it was issued from the State Tax Commission (now Department of Revenue) because the truck was titled to her and the decedent. Amos v. Brown (In re Estate of Brown), 293 So. 3d 851, 2019 Miss. App. LEXIS 585 (Miss. Ct. App. 2019).

§ 63-21-21. Delivery of certificate of title.

The certificate of title shall be mailed to the first lienholder named in it or, if none, to the owner. If the original certificate of title is delivered to a lienholder, a nontransferable duplicate certificate of title shall be mailed to the owner to serve as a permit for operation of the motor vehicle or use or occupancy of the manufactured home or mobile home.

HISTORY: Codes, 1942, § 8125-31; Laws, 1968, ch. 531, § 11; Laws, 1999, ch. 556, § 11, eff from and after July 1, 1999.

§ 63-21-23. Issuance of certificate of title where questions as to ownership of vehicle or existence of undisclosed security interests exist.

If the State Tax Commission is not satisfied as to the ownership of the vehicle, manufactured home or mobile home or that there are no undisclosed security interests in it, the commission may accept the application but shall either:

(a) Withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the commission as to the applicant's ownership of the vehicle, manufactured home or mobile home and that there are no undisclosed security interests in it; or

(b) As a condition of issuing a certificate of title, require the applicant or dealer to file with the commission a bond in the form prescribed by the commission and executed by the applicant or dealer and by a person authorized to conduct a surety business in this state, or require the application to be accompanied by the deposit of cash with the commission. The bond or cash shall be in an amount equal to one and one-half (1-½) times the value of the vehicle, manufactured home or mobile home as determined by the commission and conditioned to indemnify any prior owner and lienholder and any subsequent purchaser of the vehicle, manufactured home or mobile home or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificates of title of the vehicle, manufactured home or mobile home or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle, manufactured home or mobile home. Any such interested person has a right of action to recover on the bond or cash for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond or cash. The bond or cash shall be returned at the end of three (3) years unless the commission has been notified of the pendency of an action to recover on the bond or cash or that the vehicle, manufactured home or mobile home does not belong to the registered owner or that it is encumbered by an undisclosed lien.

HISTORY: Codes, 1942, § 8125-32; Laws, 1968, ch. 531, § 12; Laws, 1975, ch. 370; Laws, 1999, ch. 556, § 12, eff from and after July 1, 1999.

Cross References — Provision for issuance of a distinctive certificate of title for vehicles last previously registered in certain other states or countries unless security is furnished pursuant to this section, see § 63-21-19.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability for failure to provide clear title.

1. In general.

Section 63-21-23 is to enable a dealer or owner, otherwise unable to provide the supporting documents to secure a certificate of title from the State Tax Commission, to secure a certificate. It is to protect any other persons who have some claim of ownership in the vehicle. The applicant for the title is the principal and the surety company is the surety. McBride v. Aetna Casualty & Surety Co., 583 So. 2d 974, 1991 Miss. LEXIS 478 (Miss. 1991).

2. Liability for failure to provide clear title.

By executing and filing with the comptroller a surety bond in the amount of $5,000 obligating itself that in the event an automobile dealer did not fulfill his duties as "designated agent" under the Mississippi Motor Vehicle Title Law it would be liable to the extent of the amount of the bond, a surety company made itself liable to any member of the public to the extent of the amount of the bond for damages resulting from the dealer's failure to fulfill his statutory obligations as a dealer to furnish a buyer of a car with a clear title to a vehicle. Thus, upon the dealer's failure to provide a buyer with a clear title to a vehicle, the dealer became liable to the buyer for whatever damages were caused from such failure, and the surety was also liable up to $5,000. The surety, in expressing its willingness to be the buyer's surety on a bond to be executed under the provisions of § 63-21-23, did not fulfill its obligations under the bond it executed with respect to the dealer pursuant to § 63-21-13, since the buyer would have had a contingent liability as principle under the bond for any damages caused to others having some claim of ownership in the car. McBride v. Aetna Casualty & Surety Co., 583 So. 2d 974, 1991 Miss. LEXIS 478 (Miss. 1991).

RESEARCH REFERENCES

Am. Jur.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic §§ 33:21 et seq. (obtaining certificate of title or registration).

§ 63-21-25. Refusal to issue certificate of title.

The Department of Revenue shall refuse issuance of a certificate of title:

(a) If any required fee is not paid;

(b) If the department has reasonable grounds to believe that the applicant is not the owner of the vehicle, manufactured home or mobile home, or that the application contains a false or fraudulent statement, or that the applicant has failed to furnish required information or documents or any additional information the department reasonably requires; or

(c) If the certificate of title is to a manufactured home or mobile home with respect to which title has been retired to real property under Section 63-21-30 unless with respect to the same home title has been severed from real property pursuant to Section 63-21-30.

HISTORY: Codes, 1942, § 8125-33; Laws, 1968, ch. 531, § 13; Laws, 1999, ch. 556, § 13, eff from and after July 1, 1999; Laws, 2018, ch. 401, § 6, eff from and after January 1, 2019.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

§ 63-21-27. Replacement of lost, stolen, mutilated or destroyed certificates.

(1) If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the State Tax Commission, shall promptly make application for and may obtain a replacement upon furnishing information satisfactory to the commission. The replacement certificate of title shall contain the legend "This is a replacement certificate and may be subject to the rights of a person under the original certificate." It shall be mailed to the lienholder named in it or, if none, to the owner.

(2) The State Tax Commission shall not issue a new certificate of title to a transferee upon application made on replacement certificate until fifteen (15) days after receipt of the application.

(3) A person recovering an original certificate of title for which a replacement has been issued shall promptly surrender the original certificate to the State Tax Commission.

HISTORY: Codes, 1942, § 8125-34; Laws, 1968, ch. 531, § 14; Laws, 2001, ch. 596, § 66, eff from and after July 1, 2001.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the Department of Revenue and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

§ 63-21-29. Issuance of distinctive certificate of title.

If the State Tax Commission is not satisfied that there are no undisclosed security interests created before August 9, 1968, in a previously registered vehicle, or created before July 1, 1999, in a previously registered manufactured home or mobile home, the commission may, in addition to the commission's options under Section 63-21-27, issue a distinctive certificate of title of the vehicle containing the legend "This vehicle, manufactured home or mobile home may be subject to an undisclosed lien" and any other information the commission prescribes.

HISTORY: Codes, 1942, § 8125-50; Laws, 1968, ch. 531, § 30; Laws, 1999, ch. 556, § 14, eff from and after July 1, 1999.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the Department of Revenue and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

§ 63-21-30. Permanent retirement of title to manufactured home or mobile home; procedure; affidavit of severance; affidavit of destruction.

(1) If the legal owner of a manufactured home or mobile home and the real property to which the manufactured home or mobile home has become affixed, wishes to permanently retire the title to a manufactured home or mobile home to real property, then such owner may file or cause to be filed an affidavit of affixation duly sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state in the official records of the chancery clerk of the county, or in the judicial district in counties having more than one (1) such district, in which the real property is located, which contains or is accompanied by:

(a) The names and addresses of the legal owner or owners of the manufactured home or mobile home and real property to which the manufactured home or mobile home has become affixed;

(b) The name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent such data exists;

(c) The legal description and indexing instructions of the real property to which the manufactured home or mobile home is or shall be permanently affixed;

(d) A statement that the party executing the affidavit is the owner of the real property described therein;

(e) A statement that the manufactured home is to be taxed as an improvement to the real property;

(f) A statement that either:

(i) The manufactured home or mobile home is covered by a certificate of title that the owner shall surrender to the Department of Revenue;

(ii) The manufactured home or mobile home is covered by a manufacturer's statement or certificate of origin that the owner shall surrender to the Department of Revenue; or

(iii) The manufactured home or mobile home is not covered by a certificate of title and the owner of the manufactured home or mobile home, after diligent search and inquiry, is unable to produce the original manufacturer's certificate of origin for the manufactured home or mobile home, together with a bill of sale, paid tax receipts showing assessment in the name of the owner for a period of not less than ten (10) years, an installment contract reflecting the serial number or VIN of the manufactured home or mobile home, or other due proof of ownership acceptable to the Department of Revenue;

(g) A statement whether or not the manufactured home or mobile home is subject to one or more security interests or liens and if the manufactured home or mobile home is subject to one or more security interests or liens, the name and address of each party holding a security interest in or lien on the manufactured home or mobile home, including each holder shown on any certificate of title issued by the Department of Revenue, if any, the original principal amount secured by each security interest or lien;

(h) A lien release as to each party holding a security interest in or lien on the manufactured home or mobile home;

(i) A statement that:

(i) All permits required by applicable governmental authorities have been obtained;

(ii) The homeowner intends that the mobile home or manufactured home be an immovable fixture and a permanent part of the real property; and

(iii) The wheels and axles have been removed;

(j) A statement that the manufactured home is permanently connected to a septic or sewer system and other utilities such as electricity, water and/or gas;

(k) A statement that all ad valorem taxes due and payable for the manufactured home or mobile home and land on which it is located have been paid, together with a paid receipt for the prior year confirming the same;

(*l*) If different than the owner, the name and address of a person authorized to file a certified copy of the affidavit of affixation with the tax collector after it has been duly recorded in the real property records;

(m) A statement authorizing the tax collector or other designated agent to submit the completed application to the Department of Revenue for retirement of the title to the manufactured home or mobile home to real property; and

(n) Due acknowledgement of the signature of each affiant as required by Section 89-3-1 et seq. or any successor statute.

(2) The chancery clerk, upon receipt of an affidavit of affixation meeting the requirements set forth in subsection (1) of this section and applicable fee to record the affidavit and provide a certified copy thereof, shall record the affidavit of affixation in the official records and shall provide a certified copy of the recorded affidavit to the owner or other party submitting the affidavit of affixation for recording. The chancery clerk shall forward a copy of the recorded affidavit of affixation to the county tax assessor in order to assist in locating

and identifying the manufactured home or mobile home for property tax purposes.

(3) After completing the requirements in subsections (1) and (2) of this section, the owner of the manufactured home or mobile home, or lienholder as shown on the certificate of title pursuant to a power of attorney from the owner of the manufactured home or mobile home, if such lienholder is a designated agent, or the person authorized in the affidavit of affixation, shall file a certified copy of the recorded affidavit of affixation with the tax collector of the county where the manufactured home or mobile home is located for retirement of the home's title, accompanied by:

(a) A copy of the deed or other instrument of conveyance of legal ownership to the real property to which the manufactured home or mobile home has become affixed conveying a fee simple or other legal ownership interest in the subject real property; and

(b) One (1) of the following:

(i) The certificate of title to the manufactured home or mobile home duly endorsed or otherwise showing the release of any lienholders noted on the certificate of title;

(ii) The manufacturer's certificate of origin; or

(iii) If the manufactured home or mobile home is not covered by a certificate of title and the owner of the manufactured home or mobile home, after diligent search and inquiry, is unable to produce the original manufacturer's certificate of origin for the manufactured home or mobile home, a statement to that effect in the affidavit of affixation, together with a bill of sale, paid tax receipts showing assessment in the name of the owner for a period of not less than ten (10) years, an installment contract reflecting the serial number or VIN of the manufactured home or mobile home, or other due proof of ownership acceptable to the Department of Revenue.

(4) Upon receipt of the affidavit of affixation and accompanying documents, the tax collector shall submit the completed application for the retirement of the title to the manufactured home or mobile home to the Department of Revenue.

(5) Upon receipt of an application containing the items required in subsections (3) and (4) of this section, the Department of Revenue shall retire the title and shall notify the applicant, the lender, and authorized representative, if any, in writing at the address shown in the affidavit that the title to the manufactured home or mobile home has been retired. If the affidavit of affixation indicates that the manufactured home or mobile home is currently covered by a certificate of origin or is not covered by a certificate of title and after diligent search and inquiry the owner is unable to produce the original manufacturer's certificate of origin, but otherwise provides a bill of sale, paid tax receipts showing assessment in the name of the owner for a period of not less than ten (10) years, an installment contract reflecting the serial number or VIN of manufactured home or mobile home, or other due proof of ownership in a form acceptable to the Department of Revenue, then the Department of

Revenue may issue a certificate of title for the purpose of effectuating the retirement of title.

(6) If the legal owner of the manufactured home or mobile home whose title has been retired under this section and the real property to which the manufactured home or mobile home has become affixed, wishes to detach or sever the manufactured home or mobile home from the real property, then such owner may file or cause to be filed an affidavit of severance duly sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state in the official records of the chancery clerk in the county, or in the judicial district in counties having more than one (1) such district, in which the real property is located, which contains or is accompanied by:

(a) The names and mailing addresses of the legal owners of the manufactured home or mobile home and real property to which the manufactured home or mobile home has become affixed;

(b) A description of the manufactured home or mobile home including the name of the manufacturer, the model year, make, width, length, and the serial number or VIN of the manufactured home or mobile home;

(c) The book and page number or instrument number, and date of recordation of the affidavit of affixation;

(d) A statement that the party executing the affidavit is the owner of the real property described in the affidavit of affixation;

(e) A statement that the manufactured home is no longer to be taxed as an improvement to the real property;

(f) A statement whether or not the manufactured home or mobile home and real property to which the home is affixed is subject to one or more security interests or liens and if the same is subject to one or more security interests or liens, the name and address of each party holding a security interest in or lien on the manufactured home or mobile home and the real property to which it is affixed, the original principal amount secured by each security interest or lien and a statement that the security interest or lien as to the manufactured home or mobile home shall be released;

(g) A lien release as to the manufactured home or mobile home or, if the lienholder desires to retain a security interest or lien in the manufactured home or mobile home after title is severed from the real property, a lienholder's statement of the names and addresses of any lienholders in the order of their priority and the dates of their mortgages, deeds of trust or other liens filed of record upon the real property;

(h) A statement that all ad valorem taxes due and payable for the land on which the manufactured home or mobile home is located have been paid, together with paid receipts for the prior year confirming the same and acknowledgement that taxes for the current year, which are assessed but not yet due and payable, will be based on the status of the manufactured home or mobile home and real property to which it is attached as of January 1 of the current year;

(i) If different than the owner, the name and address of a person authorized to file a certified copy of the affidavit of severance with the tax collector after it has been duly recorded in the real property records and the person has received the newly issued certificate of title from the Department of Revenue;

(j) A statement authorizing the tax collector or other designated agent to submit the completed application to the Department of Revenue for the issuance of a new certificate of title to the manufactured home or mobile home; and

(k) Due acknowledgement of the signature of each affiant as required by Section 89-3-1 et seq. or any successor statute.

(7) If a manufactured home or mobile home whose title has been retired pursuant to this section is destroyed completely or otherwise becomes uninhabitable, and the legal owner of the manufactured home or mobile home, and the real property to which the manufactured home or mobile home was affixed, desires to document the destruction or uninhabitability thereof, then the owner of such destroyed or uninhabitable manufactured home or mobile home may file an affidavit of destruction duly sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state in the official records of the chancery clerk in the county and applicable judicial district, if any, in which the real property is located, which contains or is accompanied by:

(a) The date and cause of destruction or uninhabitability of the manufactured home or mobile home;

(b) The names and mailing addresses of the legal owner of the manufactured home or mobile home and real property to which the manufactured home or mobile home has become affixed;

(c) A description of the manufactured home or mobile home including the name of the manufacturer, the model year, make, width, length and the serial number or VIN of the manufactured home;

(d) The book and page number or instrument number, and date of recordation of the affidavit of affixation;

(e) A statement that the party executing the affidavit is the owner of the real property described in the affidavit of affixation; and

(f) Due acknowledgement of the signature of each affiant as required by Section 89-3-1 et seq. or any successor statute.

(8) The chancery clerk, upon receipt of an affidavit of severance meeting the requirements set forth in subsection (6) of this section or an affidavit of destruction meeting the requirements set forth in subsection (7) of this section and applicable fee to record the affidavit and provide a certified copy thereof, shall record the affidavit of severance or destruction, as applicable, in the official records and provide a certified copy of the recorded affidavit to the owner or other party submitting the affidavit for recording and shall forward a copy of the affidavit to the county tax assessor in order to assist in (a) in the case of an affidavit of severance, locating and identifying the manufactured home or mobile home for property tax purposes; or (b) in the case of an affidavit of destruction, removing the manufactured home or mobile home from the tax roll.

(9) After completing the requirements in subsections (6) and (8) of this section, the owner of the manufactured home or mobile home, and the real property to which the manufactured home or mobile home has become affixed with a recorded and retired title, or the person authorized in the affidavit of severance, shall file a certified copy of the duly recorded affidavit of severance with the tax collector of the county where the manufactured home or mobile home is located for the issuance of a new certificate of title to the manufactured home or mobile home, accompanied by:

(a) An abstract of land title showing legal ownership of the manufactured home or mobile home and real property along with any unreleased mortgages, deeds of trust or other liens filed of record upon the real property;

(b) A lien release as to the manufactured home or mobile home or a lienholder's statement of the names and addresses of any lienholders in the order of their priority; and

(c) The required fee for the certificate of title for the manufactured home or mobile home.

(10) Upon receipt of the items required in subsection (9) of this section, the tax collector of the county where the manufactured home or mobile home is located shall, for any manufactured home or mobile home for which a certificate of title would be required under Section 63-21-9, submit the completed application to the Department of Revenue for the issuance of a new certificate of title to the legal owner of the real property identified in the affidavit of severance.

(11) Upon receipt of an application containing the items required in subsection (10) of this section, the Department of Revenue shall issue a new certificate of title in the name of the legal owner(s) of the real property to which the manufactured home or mobile home was attached and, if applicable, shall list the lienholders, if any, in the order of their priority as shown in the abstract of title. The new certificate of title shall be delivered to the applicant or authorized representative, if any, at the address shown in the affidavit.

(12) Upon completing the requirements in subsection (10) of this section, the conveyance of and the perfection of a security interest in a manufactured home or mobile home shall be governed by the provisions of Chapter 21, Title 63, Mississippi Code of 1972, or Chapter 9, Title 75, Mississippi Code of 1972, as applicable.

(13) A manufactured home or mobile home shall be deemed real property for all purposes and shall be governed by the laws applicable thereto, upon the occurrence of all of the following events:

(a) An affidavit of affixation conforming to subsection (1) of this section has been duly recorded; and

(b) An application for retirement of the title to a manufactured home or mobile home conforming to subsection (3) of this section has been filed with the Department of Revenue.

When an application for retirement is filed with the Department of Revenue within sixty (60) days of recording the related affidavit of affixation in the official records of the chancery clerk in the county, or in the judicial district in counties having more than one (1) such district, in which the real property is located and the application is thereafter accepted by the department, the requirements of this section shall be deemed satisfied as of the date the affidavit of affixation is recorded.

(14) A manufactured home or mobile home whose title has been retired pursuant to this section shall be conveyed by deed or other real property contract and shall only be transferred or otherwise contracted together with the real property to which it is affixed, unless and until the procedures described in this section for severance or destruction and issuance of a new title are followed. The legal description in any such conveyance instrument may include a recitation that the real property includes a manufactured home or mobile home permanently affixed to the real property but such a recitation is not required.

(15) If the title has been retired under this section, for purposes of perfecting, realizing, and foreclosure of security interests, a separate security interest in the manufactured home or mobile home shall not exist, and the manufactured home or mobile home shall only be secured as part of the real property to which it is attached through a mortgage or deed of trust and such lien shall automatically attach as of the date of recording and must be foreclosed in the same manner as a mortgage on real property.

(16) Upon written request, the Department of Revenue shall provide written acknowledgment of compliance with the provisions of this section. Such written acknowledgment may be filed in the official records of the chancery clerk in the county, or in the judicial district in counties having more than one (1) such district, in which the real property is located.

(17) This section applies to the sale or transfer of manufactured homes or mobile homes occurring on or after January 1, 2019, or to any person who voluntarily elects to retire the title to the manufactured home or mobile home pursuant to this section.

(18) Recordation of the affidavit of affixation pursuant to subsections (1) and (2) of this section shall be prima facie evidence that the manufactured home or mobile home has become affixed to the real property as an improvement to real property and shall satisfy the requirements of 11 USC Section 1322(b)(2), or any successor statute, to the extent the manufactured home or mobile home constitutes the owner's principal residence.

(19) The affidavit of affixation required pursuant to this section shall be in substantially the following form:

THE INSTRUMENT PREPARED BY:	INDEXING INSTRUCTIONS:
____________________	____________________
____________________	____________________

AFFIDAVIT OF AFFIXATION

(MANUFACTURED HOME OR MOBILE HOME)

STATE OF______________
COUNTY OF______________

Before me, the undersigned notary public in and for said county and state, appeared [type the name and address of each homeowner signing this affidavit], known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed below (each a "homeowner"), and who, being by me first duly sworn, did each by personal oath state as follows:

1. Homeowner(s) own(s) the manufactured home or mobile home ("home") described as follows:

Manufacturer's Name Make Model Name Model Year

Manufacturer's Serial No./VIN Length/Width New/Used

2. The home is or will be located at the following "property address":

Street City County State Zip Code

3. The legal description of the real property where the home is or will be permanently affixed ("land") is:

[insert legal description]

4. The homeowner(s) executing below is/are all the legal owner(s) of the real property to which the home has become permanently affixed.

5. The home shall be assessed and taxed as an improvement to the land.

6. Check one:

[ ] The home is currently covered by a certificate of title and the homeowner shall surrender the original title to a designated agent on behalf of the Department of Revenue;

[ ] The home is currently covered by a manufacturer's certificate of origin and the homeowner shall submit the original certificate of origin to a designated agent on behalf of the Department of Revenue; or

[ ] The home is not covered by a certificate of title and the owner of the manufactured home, after diligent search and inquiry, is unable to produce the original manufacturer's certificate of origin for the home, and a bill of sale, paid tax receipts showing assessment in the name of the owner for a period of not less than ten (10) years, an installment contract reflecting the serial number or VIN of manufactured home or mobile home, or other due proof of ownership in a form acceptable to the Department of Revenue is attached hereto.

7. The home (check one):

[ ] is not subject to any security interest or lein; or

[ ] is subject to the following security interests or liens:

Lienholder #1 Original Principal Amount Secured

Address:

Lienholder #2 Original Principal Amount Secured

Address:

8. Other than those disclosed in this affidavit, the homeowner is not aware of (a) any other security interest or lien affecting the home; and (b) any other facts or information that could reasonably affect the validity of the title of the home or the existence or nonexistence of security interests or lien in it.

9. A release of personal property security interest or lien from each of the lienholders identified in paragraph 7 of this affidavit, if any, is attached hereto.

10. (a) All permits required by applicable governmental authorities have been obtained; (b) the wheels and axles have been removed; and (c) the home is or will be permanently connected to a septic or sewer system and other utilities such as electricity, water and/or gas.

11. The home is or shall become an immovable fixture and a permanent part of the real property.

12. All ad valorem taxes currently due and payable for the home and the land to which it is attached have been paid and a receipt for the prior year confirming the same are attached hereto.

13. The homeowner(s) hereby authorize(s) the following person(s) to file an application to retire title to the home with the tax collector of the county where the manufactured home or mobile home is located and to receive written acknowledgement from the Department of Revenue of retirement of title:

Name of Authorized Representative____________________

Mailing Address________________________Phone Number________________

14. The homeowner(s) hereby authorize(s) the tax collector to submit the completed application on behalf of the homeowner(s) to the Department of Revenue to permanently retire title to the manufactured home or mobile home to herein described land. This affidavit is executed by homeowner(s) pursuant to applicable state law and shall be recorded in the official land records in the county, or in the judicial district in counties having more than one (1) such district, in which the home is located.

Further, affiant(s) sayeth naught.

____

Signature of Homeowner #1

____

Printed Name Address City State Zip Code

____

Signature of Homeowner #2 (If more than one homeowner):

____

Printed Name Address City State Zip Code

Sworn to and subscribed before me this the ____ day of ________, 20____.

____

Notary Public

My Commission Expires: ____

(20) The affidavit of severance required pursuant to this section shall be in substantially the following form:

THE INSTRUMENT PREPARED BY:	INDEXING INSTRUCTIONS:
______________________________	______________________________
______________________________	______________________________

AFFIDAVIT OF SEVERENCE

(MANUFACTURED HOME OR MOBILE HOME)

STATE OF______________
COUNTY OF______________

Before me, the undersigned notary public in and for said county and state, appeared [type the name and address of each homeowner signing this affidavit], known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed below (each a "homeowner"), and who, being by me first duly sworn, did each by personal oath state as follows:

1. Homeowner(s) own(s) the manufactured home or mobile home ("home") described as follows:

____

Manufacturer's Name Make Model Name Model Year

____

Manufacturer's Serial No./VIN Length/Width New/Used

2. The title to the home was previously retired pursuant to that certain affidavit of affixation recorded on______________in Book________, Page________ or as Instrument____________.

3. The homeowner(s) executing below is/are all the legal owner(s) of the real property to which the home has become permanently affixed.

4. Upon the recording hereof, the home shall no longer be assessed and taxed as an improvement to real property.

5. The home (check one):

[ ] is not subject to any security interest or lein; or
[ ] is subject to the following security interests or liens:

____

Lienholder #1 Original Principal Amount Secured

____

Address:

____

Lienholder #2 Original Principal Amount Secured

____

Address:

6. Other than those disclosed in this affidavit, the homeowner is not aware of (a) any other security interest or lien affecting the home; or (b) any other facts or information that could reasonably affect the validity of the title of the home or the existence or nonexistence of security interests or lien in it.

7. Check one:

[ ] A release of the real property security interest or lien from each of the lienholders identified in paragraph 6 of this affidavit, if any, is attached hereto; or

[ ] A statement from each of the lienholders identified in paragraph 6 of this affidavit is attached hereto authorizing the lienholder's security interest or lien to be recorded on the face of the certificate of title and, if more than one lienholder, the order of priority of the same.

8. All ad valorem taxes due and payable for the land on which the home is located have been paid, and a paid receipt for the prior year confirming the same are attached hereto. Homeowner acknowledges that taxes for the current year, which are assessed but not yet due and payable, will be based on the status of the home and land to which it is attached as of January 1 of the current year.

9. The homeowner(s) hereby authorize(s) the following person(s) to file a certified copy of the affidavit of severance with the tax collector of the county where the manufactured home or mobile home is located and to receive the newly issued certificate of title from the Mississippi Department of Revenue:
Name of Authorized Representative__________________
Mailing Address________________________Phone Number_______________

10. The homeowner(s) hereby authorize(s) the tax collector to submit the completed application on behalf of the homeowner(s) to the Department of Revenue to sever title to the manufactured home or mobile home from herein described land and issue a new certificate of title in the name of the homeowner(s).

This affidavit is executed by homeowner(s) pursuant to applicable state law and shall be recorded in the official land records in the county in which the home is located.

Further, affiant(s) sayeth naught.

____
Signature of Homeowner #1

____
Printed Name Address City State Zip Code

____
Signature of Homeowner #2 (If more than one homeowner):

____
Printed Name Address City State Zip Code

Sworn to and subscribed before me this the ____ day of ________, 20____.

Notary Public__________________________________

My Commission Expires: ______________________________________

(21) The affidavit of destruction required pursuant to this section shall be in substantially the following form:

THE INSTRUMENT PREPARED BY:	INDEXING INSTRUCTIONS:
______________________________	______________________________
______________________________	______________________________

AFFIDAVIT OF DESTRUCTION

(MANUFACTURED HOME OR MOBILE HOME)

STATE OF_______________
COUNTY OF_______________

Before me, the undersigned notary public in and for said county and state, appeared [type the name and address of each homeowner signing this affidavit], known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed below (each a "homeowner"), and who, being by me first duly sworn, did each by personal oath state as follows:

1. Homeowner(s) own(s) the manufactured home or mobile home ("home") described as follows:

____

Manufacturer's Name Make Model Name Model Year

____

Manufacturer's Serial No./VIN Length/Width New/Used

2. The title to the home was previously retired pursuant to that certain affidavit of affixation recorded on_______________ in the official land records of in____________County, Mississippi, in Book________, Page________ or as Instrument____________.

3. The homeowner(s) executing below is/are all the legal owner(s) of the real property to which the home has become permanently affixed.

4. The home was destroyed or became uninhabitable on _______________ (insert date) as a result of ________________________ (describe cause).

This affidavit is executed by homeowner(s) pursuant to applicable state law and shall be recorded in the official land records in the county, or in the judicial district in counties having more than one (1) such district, in which the home is located.

Further, affiant(s) sayeth naught.

____

Signature of Homeowner #1

____

Printed Name Address City State Zip Code

____

Signature of Homeowner #2 (If more than one homeowner):

____

Printed Name Address City State Zip Code

Sworn to and subscribed before me this the ____ day of ________, 20____.

____

Notary Public
My Commission Expires: ______________________________

HISTORY: Laws, 2003, ch. 376, § 1, eff from and after passage (approved Mar. 13, 2003.); Laws, 2018, ch. 401, § 7, eff from and after January 1, 2019.

Editor's Notes — Laws, 2003, ch. 376, § 2, provides:

"SECTION 2. The provisions of this act shall be codified in Chapter 21 of Title 63, Mississippi Code of 1972."

§ 63-21-31. Procedure upon transfer of interest in vehicle by owner generally.

(1) If an owner transfers his interest in a vehicle, manufactured home or mobile home, other than by the creation of a security interest, he shall, at the time of the delivery of the vehicle, manufactured home or mobile home, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate or as the State Tax Commission prescribes, and cause the certificate and assignment to be mailed or delivered to the transferee.

(2) Except as provided in Section 63-21-35, the transferee shall, promptly after delivery to him of the vehicle, manufactured home or mobile home, execute the application for a new certificate of title in the space provided therefor on the certificate or as the commission prescribes, and cause the certificate and application to be delivered to a designated agent. If however, the transferor is not a designated agent, the certificate and application shall be processed by a county tax collector or a designated agent.

(3) Upon request of the owner or transferee, a lienholder in possession of the certificate of title shall, unless the transfer was a breach of his security agreement, deliver the certificate to the transferee. Upon receipt of the certificate the transferee shall make application to a designated agent for a new certificate as required by Section 63-21-15. The delivery of the certificate does not affect the rights of the lienholder under his security agreement.

(4) If a security interest is reserved or created at the time of the transfer, the certificate of title shall be retained by or delivered to the person who becomes the lienholder and the parties shall comply with the provisions of Section 63-21-47.

(5) Except as provided in Section 63-21-35, and as between the parties, a transfer by an owner is not effective until the provisions of this section have been complied with.

HISTORY: Codes, 1942, § 8125-35; Laws, 1968, ch. 531, § 15; Laws, 1970, ch. 483, § 3; Laws, 1999, ch. 556, § 15, eff from and after July 1, 1999.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Validity of title upon transfer.

1. In general.

Entrustment statute did not take precedence over title statute where owner and holder of certificate of title of truck never entrusted to merchant within § 75-2-403(2) and purchaser of truck did not acquire truck from merchant. Hicks v. Thomas, 516 So. 2d 1344, 1987 Miss. LEXIS 2949 (Miss. 1987).

It was not necessary for a purchaser to receive the certificate of origin at the time of delivery of a vehicle before title could pass to him, and thus the sale was complete upon delivery, since § 75-2-403(2), providing that the entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in the ordinary course of business, would prevail over § 63-21-31, providing that transfer of a vehicle is not effective unless at the time of the delivery of the vehicle the owner executes an assignment and warranty of title to the transferee. Atwood Chevrolet-Olds., Inc. v. Aberdeen Municipal School Dist., 431 So. 2d 926, 1983 Miss. LEXIS 2669 (Miss. 1983).

2. Validity of title upon transfer.

Individual who had been involved in automobile business and related businesses was charged with knowledge that he could have furnished State Motor Vehicle Comptroller with vehicle identification number on truck and, for nominal fee, found whether there was title certificate outstanding with respect to that truck, and if so, in whose name it appeared, and was therefore not innocent purchaser for value without notice of any claim or defense to title to truck. Hicks v. Thomas, 516 So. 2d 1344, 1987 Miss. LEXIS 2949 (Miss. 1987).

Claim by purchaser that he bought truck from one who had title under claim that vehicle had been abandoned and that his transferor had at least voidable title failed because true owner, certificate of title holder, never directly, implicitly, or otherwise transferred to anyone certificate of title to truck. Hicks v. Thomas, 516 So. 2d 1344, 1987 Miss. LEXIS 2949 (Miss. 1987).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 35 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 4.

3 Am. Jur. Legal Forms 2d, Automobiles and Highway Traffic §§ 33:21-33:32.

CJS.

60 C.J.S., Motor Vehicles §§ 96-99.

§ 63-21-33. Procedure upon transfer of title to or from dealers; records; duties of persons in possession of vehicles with improperly assigned titles; title to vehicles obtained by insurers upon payment of claims of loss.

If a dealer buys a vehicle, manufactured home or mobile home and holds it for resale and procures the certificate of title from the owner or the lienholder within ten (10) days after delivery to him of the vehicle, manufactured home or mobile home, he need not send the certificate to the State Tax Commission. However, upon transferring the vehicle, manufactured home or mobile home to another person other than by the creation of a security interest, he shall promptly execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided therefor on the certificate or as the State Tax Commission prescribes, and deliver the certificate to a designated agent with the transferee's application for a new certificate.

Every dealer shall maintain for five (5) years a record in the form the State Tax Commission prescribes of every vehicle, manufactured home or mobile home bought, sold or exchanged by him or received by him for sale or exchange, which shall be open to inspection by a representative of the State Tax Commission or patrol or peace officer during reasonable business hours.

Any person found to be in possession of a vehicle, manufactured home or mobile home with an improperly assigned title which fails to identify the transferee shall immediately establish ownership of the vehicle, manufactured home or mobile home, register the vehicle, manufactured home or mobile home and pay the required tax and penalty. The vehicle, manufactured home or mobile home shall be impounded by state or local law enforcement officials until such time as the person in possession can prove ownership or until the rightful owner is located. In the event the rightful owner cannot be established within thirty (30) days, the vehicle, manufactured home or mobile home shall be deemed abandoned and shall be disposed of as provided by law.

An insurance company which obtains title to a motor vehicle as a result of paying a total loss claim resulting from collision, fire, flood or other cause shall obtain a salvage certificate of title in its name for such vehicle from the State Tax Commission. The provisions of this subsection shall not apply to vehicles ten (10) years old or older with a value of One Thousand Five Hundred Dollars ($1,500.00) or less, or to vehicles with damage which requires the replacement of five (5) or fewer minor components, which such insurer may dispose of by endorsing change in ownership on the certificate of title using space reserved for reassignment of title by licensed dealer without obtaining a salvage certificate of title.

HISTORY: Codes, 1942, § 8125-36; Laws, 1968, ch. 531, § 16; Laws, 1970, ch. 483, § 4; Laws, 1991, ch. 575, § 2; Laws, 1999, ch. 556, § 16, eff from and after July 1, 1999.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic § 38.

§ 63-21-35. Procedure upon transfer of interest of owner by operation of law.

(1) If the interest of an owner in a vehicle, manufactured home or mobile home passes to another other than by voluntary transfer the transferee shall, except as provided in subsection (2), promptly deliver to a county tax collector or a designated agent the last certificate of title, if available, proof of the

transfer, and make application for a new certificate in the form the State Tax Commission prescribes.

(2) If the interest of the owner is terminated or the vehicle, manufactured home or mobile home is sold under a security agreement by a lienholder named in the certificate of title, the transferee shall promptly make application to a county tax collector or a designated agent for a new certificate in the form the commission prescribes. The application shall be accompanied by the last certificate of title and an affidavit made by or on behalf of the lienholder that the vehicle, manufactured home or mobile home was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement.

If the lienholder succeeds to the interest of the owner and holds the vehicle, manufactured home or mobile home for resale, he need not secure a new certificate of title but, upon transfer to another person, shall promptly mail or deliver to the transferee the certificate, affidavit and other documents required to be sent to the commission by the transferee. The transferee shall promptly make application to a county tax collector or a designated agent for a new certificate in the form prescribed by the commission.

(3) Notwithstanding anything to the contrary contained in this section, a person holding a certificate of title whose interest in the vehicle, manufactured home or mobile home has been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the commission upon request of the commission. The delivery of the certificate pursuant to the request of the commission does not affect the rights of the person surrendering the certificate. The action of the commission in issuing a new certificate of title as provided herein is not conclusive upon the rights of an owner or lienholder named in the old certificate.

HISTORY: Codes, 1942, § 8125-37; Laws, 1968, ch. 531, § 17; Laws, 1970, ch. 483, § 5; Laws, 1999, ch. 556, § 18, eff from and after July 1, 1999.

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 35 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 96-99.

§ 63-21-37. Issuance of new certificate of title; disposition of surrendered certificates.

Except as provided in subsection (c) of Section 63-21-25, the Department of Revenue, upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee and any other documents required by the Department of Revenue, shall issue a new certificate of title in the name of the transferee as owner and mail it to the first lienholder named in it or, if none, to the owner.

Except as provided in subsection (c) of Section 63-21-25, the Department of Revenue, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to the Department of Revenue, the department shall make demand therefor from the holder thereof.

The Department of Revenue shall file every surrendered certificate of title, every manufacturer's certificate of origin, or a microfilm of every such certificate, for a period of time deemed necessary by it in order to permit the tracing of title of the vehicle, manufactured home or mobile home designated therein. Such filing requirement shall be in addition to and not in substitution for the recordkeeping requirements set forth in Section 63-21-17, which recordkeeping requirements are not limited to any period of time.

HISTORY: Codes, 1942, § 8125-38; Laws, 1968, ch. 531, § 18; Laws, 1999, ch. 556, § 19, eff from and after July 1, 1999; Laws, 2018, ch. 401, § 8, eff from and after January 1, 2019.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the Department of Revenue and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

§ 63-21-38. Requirements of scrap metal processor or used motor vehicle parts dealer when purchasing any vehicle or scrap vehicle.

Should a scrap metal processor or used motor vehicle parts dealer be presented the certificate of title or vehicle license plate for any vehicle or scrap vehicle purchased, that scrap metal processor or used motor vehicle parts dealer shall mail or deliver the same to the Department of Revenue as required by law. In lieu of a certificate of title, an affidavit in accordance with the provisions of Section 63-21-39(1) shall be obtained by a scrap metal processor. All other requirements of Section 63-21-39(1) shall be complied with and any other rules promulgated according to that section.

HISTORY: Laws, 2011, ch. 451, § 2, eff from and after July 1, 2011.

§ 63-21-39. Procedure where vehicle scrapped, dismantled or destroyed; procedure where title for vehicle being transferred to used motor vehicle parts dealer or scrap metal processor is unavailable; obtaining title on vehicle with salvage certificate of title; Salvage Certificate of Title Fund; regulations; penalties for violation of section.

(1)(a) An owner who scraps, dismantles or destroys a vehicle and a person who purchases a vehicle as scrap or to be dismantled or destroyed shall indicate same on the back of the certificate of title and shall immediately cause the certificate of title and any other documents required by the

Department of Revenue to be mailed or delivered to the Department of Revenue for cancellation. A certificate of title of the vehicle shall not again be issued except upon application containing the information the Department of Revenue requires, accompanied by a certificate of inspection in the form and content specified in Section 63-21-15(5) and proof of payment of a fee as provided in subsection (2) of this section.

(b) Notwithstanding any other provision of this chapter to the contrary, if the owner or authorized agent of the owner has not obtained a title in his or her name for the vehicle to be transferred, has lost the title for the vehicle to be transferred, or has returned the title to the Department of Revenue in accordance with paragraph (a) of this subsection, he or she may sign a statement swearing that, in addition to the foregoing conditions, the vehicle is at least ten (10) model years old. The statement described in this paragraph may be used only to transfer such a vehicle to a licensed used motor vehicle parts dealer or scrap metal processor. The department shall promulgate a form for the statement which shall include, but not be limited to:

(i) A statement that the vehicle shall never be titled again; it must be dismantled or scrapped;

(ii) A description of the vehicle including the year, make, model and vehicle identification number;

(iii) The name, address, and driver's license number, nondriver identification card number or tribal identification card number of the owner;

(iv) A certification that the owner:

1. Never obtained a title to the vehicle in his or her name; or

2. Was issued a title for the vehicle, but the title was lost or stolen;

(v) A certification that the vehicle:

1. Is at least ten (10) model years old; and

2. Is not subject to any security interest or lien;

(vi) An acknowledgment that the owner and buyer of the vehicle realizes this form will be filed with the department and that:

1. It is a misdemeanor, punishable by a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment for not more than six (6) months, or both, for conviction of a first offense of knowingly falsifying any information on this statement; and

2. It is a felony, punishable by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00) or imprisonment for not less than one (1) year nor more than five (5) years, or both, for conviction of a second or subsequent offense of knowingly falsifying any information on this statement;

(vii) The owner's signature and the date of the transaction;

(viii) The name and address of the business acquiring the vehicle;

(ix) The National Motor Vehicle Title Information System identification number; and

(x) The business agent's signature and date along with a printed name and title if the agent is signing on behalf of a corporation.

(c) Until such time as the department makes available an Internet-based system, the used motor vehicle parts dealer or scrap metal processor shall mail or otherwise deliver the statement required under paragraph (b) of this subsection (1) to the Department of Revenue within three (3) business days of the completion of the transaction, requesting that the department cancel the Mississippi certificate of title and registration. Once the department develops an Internet-based system, the used motor vehicle parts dealer or scrap metal processor shall utilize such system and within two (2) business days electronically submit the information contained in the statement using that system.

(d) Within two (2) business days of each day's close of business, the used motor vehicle parts dealer or scrap metal processor who purchases or receives motor vehicles for scrap or for parts shall deliver in a format approved by the department, by electronic means once developed and made available by the department, a list of all such vehicles purchased that day for scrap or for parts. That list shall contain the following information:

(i) The name, address and contact information for the reporting entity;

(ii) The vehicle identification numbers of such vehicles;

(iii) The dates such vehicles were obtained;

(iv) The names of the individuals or entities from whom the vehicles were obtained, for use by law enforcement personnel and appropriate governmental agencies only;

(v) A statement of whether the vehicles were, or will be, crushed or disposed of, or offered for sale or other purposes;

(vi) A statement of whether the vehicle is intended for export out of the United States; and

(vii) The National Motor Vehicle Title Information System identification number of the business acquiring the vehicle.

(e)(i) For purposes of this subsection, the term "motor vehicle" shall not include a vehicle which has been crushed or flattened by mechanical means such that it is no longer the motor vehicle as described by the certificate of title, or such that the vehicle identification number is no longer visible or accessible.

(ii) In cases in which crushed or flattened vehicles are purchased or received, the purchasing or receiving used motor vehicle parts dealer or scrap metal processor shall verify that the seller has reported the vehicles in accordance with this subsection. Such verification may be in the form of a certification from the seller or a contract between the seller and the purchasing or receiving used motor vehicle parts dealer or scrap metal processor attesting to the seller's compliance with the reporting requirements of this subsection. Such verification must clearly identify the seller by a government issued photograph identification card or employer identification number, and the verification and copy of the identification card or number shall be maintained by the purchasing or receiving used motor vehicle parts dealer or scrap metal processor for a period of not less than two (2) years.

(f) The information obtained by the department in accordance with paragraph (d) of this subsection (1) shall be reported to the National Motor Vehicle Title Information System, in a format that will satisfy the requirement for reporting this information, in accordance with rules adopted by the United States Department of Justice in 28 C.F.R. 25.56.

(g) Until such time as the department develops and makes available the Internet-based system described in paragraph (d) of this subsection, the used motor vehicle parts dealer or scrap metal processor who purchases or receives motor vehicles for scrap or for parts shall deliver the information required by paragraph (d) to the National Motor Vehicle Title Information System through any data consolidator approved by such system, within forty-eight (48) hours of the day the vehicle was purchased or acquired by such used motor vehicle parts dealer or scrap metal processor which shall satisfy the requirements of paragraph (d).

(h) The information obtained by the department in accordance with paragraph (d) of this subsection (1) shall be made available only to law enforcement agencies and for purposes of canceling certificates of title. The information shall otherwise be considered to be confidential business information of the respective reporting entities.

(i) All records required under the provisions of this subsection shall be maintained for a period of two (2) years by the reporting entity and shall include a scanned or photocopied copy of the seller's or seller's representative's driver's license or state-issued identification card or other valid form of identification.

(j) A person who knowingly and willfully violates this subsection (1), or any person who knowingly and willfully falsifies or assists another person in falsifying the statement or information required under paragraph (b) or (d) of this subsection, or any person who knowingly and willfully sells a vehicle upon which there is an unsatisfied lien or security interest, or who purchases a vehicle without complying with either paragraph (a) or (b) of this subsection and who knowingly and willfully destroys or dismantles a vehicle upon which he knows that there is an unsatisfied lien or security interest shall:

(i) Be guilty of a misdemeanor, punishable by a fine not more than One Thousand Dollars ($1,000.00) or imprisonment for not more than six (6) months, or both, for conviction of a first offense; or

(ii) Upon conviction of a second or subsequent offense, a felony, punishable by imprisonment for not less than one (1) year nor more than five (5) years or a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or both.

In addition, the court may order each person convicted to pay restitution to any party suffering monetary loss in the amount of such loss. No part of any sentence imposed by the court shall be suspended unless such restitution has been paid in full.

(k) A person who knowingly and willfully fails to deliver the title as required under paragraph (a) of this subsection, or the statement required under paragraph (b) of this subsection to the Department of Revenue within seventy-two (72) hours of the completion of the transaction, or who, until such time as the department develops and makes available the Internet-based system described in paragraph (d), fails to deliver the information required by paragraph (d) to the National Motor Vehicle Title Information System through any data consolidator approved by such system, within two (2) business days of the day the vehicle was purchased or acquired by such used motor vehicle parts dealer or scrap metal processor shall be in violation of this section, and subject to a civil penalty of up to One Thousand Dollars ($1,000.00) per violation. Actions to impose this penalty may be brought by any local or state law enforcement agency, district attorney, or by the Attorney General, in any court of competent jurisdiction. One-half (½) of the monies generated from such civil penalties shall be deposited in a special fund created in the State Treasury for use by the Department of Revenue's Title Bureau, and one-half (½) of the monies generated from such civil penalties shall be deposited in the general fund of the municipality if the suit was brought in a municipal court, or in the general fund of the county if the suit was brought in the court of a county.

(2) For the purpose of requesting a branded title on a vehicle with a salvage certificate of title, every owner of a vehicle that has been issued a salvage certificate of title in this state or any other state which has been restored in this state to its operating condition which existed prior to the event which caused the salvage certificate of title to be issued shall make application to the Department of Revenue, accompanied by a certificate of inspection issued by the Department of Public Safety in the form and content specified in Section 63-21-15(5) and the payment of a fee of Seventy-five Dollars ($75.00) for each motor vehicle for which a certificate of inspection is issued. In addition, the Department of Public Safety may charge such a person a fee in the amount of Twenty-five Dollars ($25.00) for performing any vehicle identification number verification required by federal law or regulation for the vehicle for which the person is applying for a title. All such monies shall be collected by the Department of Public Safety and paid to the State Treasurer for deposit in a special fund that is hereby created in the State Treasury to be known as the "Salvage Certificate of Title Fund." Monies in the special fund may be expended by the Department of Public Safety, upon appropriation by the Legislature. The Department of Revenue shall establish by regulation the minimum requirements by which a vehicle which has been issued a salvage certificate of title may be issued a branded title.

(3) Before a branded title may be issued for a vehicle for which a salvage certificate of title has been issued, the applicant shall submit, by hand delivery or mail, such documents and information to the Department of Public Safety as the department may require for the purpose of determining if the vehicle complies with the requirements of this section and all applicable regulations promulgated by the Commissioner of Public Safety and the Department of Revenue. The Department of Public Safety also may require that an applicant bring a vehicle for which application for a branded title is being made to a

Highway Patrol facility for a visual inspection whenever the department deems that a visual inspection is necessary or advisable. Nothing in this section shall be construed to prohibit inspectors of the Mississippi Highway Patrol from conducting on-site inspections and investigations of motor vehicle rebuilders or motor vehicle repair businesses to determine if such businesses are in compliance with all applicable laws relating to the motor vehicle title laws of this state and regulations promulgated by the Commissioner of Public Safety and the Department of Revenue.

HISTORY: Codes, 1942, § 8125-39; Laws, 1968, ch. 531, § 19; Laws, 1991, ch. 575, § 3; Laws, 2006, ch. 466, § 1; Laws, 2011, ch. 451, § 3; Laws, 2013, ch. 570, § 1, eff from and after July 1, 2013; Laws, 2018, ch. 358, § 2, eff from and after July 1, 2018; Laws, 2021, ch. 378, § 6, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (1)(b) by substituting "any other provision of this chapter" for "any other provision of this article." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Amendment Notes — The 2021 amendment, in (1)(b), substituted "paragraph (a) of this subsection" for "Section 63-21-39(1)(a)" in the introductory paragraph, and inserted "nondriver identification card number or tribal identification card number" in (iii); in (1)(i), added "or other valid form of identification"; and in (1)(j), substituted "paragraph (a) or (b)" for "paragraphs (a) or (b)" and "paragraph (a) or (b) of this subsection" for "subsection (1)(a) or (1)(b) of this section."

Cross References — Issuance of certificate of title for vehicle for which salvage certificate of title has been issued, see § 63-21-15.

Seizure of motor vehicle, trailer or similar conveyance for violation of this section, see § 63-21-101.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 63-21-40. Issuance of salvage certificates of title for damaged manufactured or mobile homes.

(1) An owner who scraps, dismantles or destroys a manufactured home or mobile home for which a certificate of title has been issued, and a person who purchases a manufactured home or mobile home as scrap or to be dismantled or destroyed for which a certificate of title has been issued, shall make such an indication on the back of the certificate of title and shall immediately cause the certificate of title and any other documents required by the State Tax Commission to be mailed or delivered to the commission for cancellation.

(2) An insurance company which as a result of paying a total loss claim becomes the owner of a mobile home or manufactured home and obtains the insured's certificate of title, within seventy-two (72) hours after obtaining the title shall apply to the State Tax Commission for a new certificate of title, surrendering with its application the current certificate of title, including documentation to show if the title applied for is for a salvage mobile home or salvage manufactured home, and including a signed statement on original company letterhead that states: ( ) collision damage, ( ) flood damage, ( ) fire

damage, ( ) wind damage, or ( ) other damage. If the damage is "other damage," the company shall describe the nature of the damage. The insurance company shall staple this statement to the certificate of title and make a notation on the face of the certificate of title. The application shall be made by the insurance company in the manner and form prescribed and provided by the State Tax Commission. The provisions of this subsection do not apply to a mobile home or manufactured home that is twenty (20) years old or older.

(3) Brands appearing on certificates of title issued by this state or another state that reveal a pertinent fact or facts about a mobile home or manufactured home shall be continued on certificates of title issued by this state. The State Tax Commission shall brand a certificate of title with "collision damage," "flood damage," "fire damage," "wind damage," or "other damage" where the immediate previous certificate of title was issued by this state. The State Tax Commission shall brand a certificate of title to be issued by this state with the same or other brands where the immediate previous certificate of title was issued by another state and such title indicates the same or other brands are appropriate. Such certificate of title shall not attest to the condition of the mobile home or manufactured home at the time the certificate of title is issued or to whether the mobile home or manufactured home has been rebuilt according to any applicable federal or state laws, rules or regulations.

HISTORY: Laws, 1999, ch. 556, § 17, eff from and after July 1, 1999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1). The word "the" was inserted between "to" and "commission" so that "mailed or delivered to commission for cancellation" now reads "mailed or delivered to the commission for cancellation. The Joint Committee ratified the correction at its May 16, 2002 meeting.

§ 63-21-41. Applicability of chapter to particular liens and security interests.

This chapter does not apply to or affect:

(a) A lien given by statute or rule of law to a supplier of services or materials for the vehicle, manufactured home or mobile home;

(b) A lien given by statute to the United States, this state, or any political subdivision of this state;

(c) A security interest in a vehicle, manufactured home or mobile home created by a manufacturer or dealer who holds the vehicle, manufactured home or mobile home for sale; however, a buyer in the ordinary course of trade from the manufacturer or dealer takes title free of the security interest.

HISTORY: Codes, 1942, § 8125-40; Laws, 1968, ch. 531, § 20; Laws, 1999, ch. 556, § 20, eff from and after July 1, 1999.

Cross References — Notice of and rights at forfeiture proceedings under alcoholic beverage control law for lienholders and secured parties, see §§ 67-1-93, 67-1-95.

Security interests under Uniform Commercial Code, see §§ 75-9-101 et seq.

§ 63-21-42. Creation of security interest by transaction involving motor vehicle or trailers which provides for adjustment of rental price.

In the case of motor vehicles, trailers, manufactured homes or mobile homes, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle, trailer, manufactured home or mobile home.

HISTORY: Laws, 1994, ch. 445, § 5; Laws, 1999, ch. 556, § 21, eff from and after July 1, 1999.

§ 63-21-43. Perfection of security interests.

(1) Unless excepted by Section 63-21-41, a security interest in a vehicle, manufactured home or mobile home of a type which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or lienholders of the vehicle, manufactured home or mobile home unless perfected as provided in this chapter.

(2)(a) A security interest is perfected at the time the owner signs a security agreement describing the vehicle, manufactured home or mobile home, the secured party gives value, the owner has rights in the vehicle, manufactured home or mobile home, and an application for certificate of title signed by the owner is presented to a designated agent; provided, however, that a purchase money security interest under Chapter 9, Title 75 (Uniform Commercial Code - secured transactions) in a mobile home or a manufactured home is perfected against the rights of judicial lien creditors and execution creditors on and after the date such purchase money security interest attaches.

(b) The designated agent shall deliver to the Department of Revenue the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the date of his security agreement, and the required fee, but the security interest will perfect at the time the requirements of subsection 2(a) of this section are met.

(3) If a vehicle, manufactured home or mobile home is subject to a security interest when brought into this state, the validity of the security interest is determined by the law of the jurisdiction where the vehicle, manufactured home or mobile home was when the security interest attached, subject to the following:

(a) If the parties understood at the time the security interest attached that the vehicle, manufactured home or mobile home would be kept in this state and it was brought into this state within thirty (30) days thereafter for purposes other than transportation through this state, the validity of the security interest in this state is determined by the law of this state.

(b) If the security interest was perfected under the law of the jurisdiction where the vehicle, manufactured home or mobile home was when the security interest attached, the following rules apply:

(i) If the name of the lienholder is shown on an existing certificate of title issued by that jurisdiction, his security interest continues perfected in this state.

(ii) If the name of the lienholder is not shown on an existing certificate of title issued by that jurisdiction the security interest continues perfected in this state for four (4) months after a first certificate of title of the vehicle, manufactured home or mobile home is issued in this state, and also thereafter if, within the period of four (4) months, it is perfected in this state. The security interest may also be perfected in this state after the expiration of the period of four (4) months, in which case perfection dates from the time of perfection in this state.

(c) If the security interest was not perfected under the law of the jurisdiction where the vehicle, manufactured home or mobile home was when the security interest attached, it may be perfected in this state, in which case perfection dates from the time of perfection in this state.

(d) A security interest may be perfected under paragraph (b)(ii) or paragraph (c) of this subsection, either as provided in subsection (2), or by the holder of the lien created out of this state delivering to a county tax collector or a designated agent a notice of security interest in the form the Department of Revenue prescribes, together with documents to support the security interest as required by the Department of Revenue and the required fee. The county tax collector or a designated agent shall process said notice in the manner prescribed by the Department of Revenue.

HISTORY: Codes, 1942, § 8125-41; Laws, 1968, ch. 531, § 21; Laws, 1970, ch. 483, § 6; Laws, 1977, ch. 313; Laws, 1995, ch. 437, § 1; Laws, 1999, ch. 556, § 22, eff from and after July 1, 1999; Laws, 2018, ch. 401, § 9, eff from and after January 1, 2019.

Cross References — Continued applicability of security interest upon extension, renewal or refinancing of loan, see § 63-19-43.

Security interests under Uniform Commercial Code, see §§ 75-9-101 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Relationship with other laws.

1. In general.

Since interest in motor vehicles was not perfected according to former applicable version of Mississippi Motor Vehicle Title Law, interest was not secured and not valid against bank's perfected lien. Regan v. Citizens Bank, 675 So. 2d 1239, 1996 Miss. LEXIS 326 (Miss. 1996).

A lender's attached purchase money security interest in an automobile dealership's inventory of used vehicles was not properly perfected under the Mississippi Motor Vehicle Title Law where the lender never filed a financing statement. Ford Motor Credit Co. v. State Bank & Trust Co., 571 So. 2d 937, 1990 Miss. LEXIS 692 (Miss. 1990).

2. Relationship with other laws.

Security interest in automobiles could not be perfected by using Uniform Commercial Code (UCC) method for nontitled personal property; interest in motor vehicles was not valid unless the security interest was perfected pursuant to applicable version of Mississippi Motor Vehicle Title Law. Regan v. Citizens Bank, 675 So. 2d 1239, 1996 Miss. LEXIS 326 (Miss. 1996).

The statutory requirement that an application for a certificate of title must include the vehicle owner's name was satisfied by an application that listed a sole proprietorship as owner since the term "firm," as used in the definition of the term "person" meant a sole proprietorship; thus, the fact that title was so held did not defeat perfection of a lienholder's security interest in the vehicle. Further, a failure to list all of the facts for an application under § 63-21-15 does not defeat the perfection of a security interest under § 63-21-43, which does not require that the owner's name be listed. GMAC v. Pongetti, 608 F.2d 1015 (5th Cir. 1979).

Where assignee of automobile conditional sales contract perfected his security interest in Alabama in 1970 and later in June of 1970 the conditional owner moved to Mississippi and neither the conditional owner nor the assignee of the conditional sales contract made application for a Mississippi certificate of title and no financing statement was filed in Mississippi the owner of the conditional sales contract had a security interest in the automobile to remain in effect for only 4 months after the automobile was brought into Mississippi and such security interest did not remain perfected thereafter under either Mississippi Motor Vehicle Title Law, Code 1942, § 8125-21 or under the Mississippi Uniform Commercial Code, Code 1942, § 41A:9-103. In re Partain, 351 F. Supp. 750, 1972 U.S. Dist. LEXIS 11117 (N.D. Miss. 1972).

RESEARCH REFERENCES

Am. Jur.

7A Am. Jur. 2d, Automobiles and Highway Traffic §§ 50 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 103-110.

§ 63-21-45. Procedure upon creation of security interest.

(1) If an owner creates a security interest in a vehicle, manufactured home or mobile home:

(a) The owner shall immediately execute the application in the space provided therefor on the certificate of title, or on a separate form the State Tax Commission prescribes to name the lienholder on the certificate showing the name and address of the lienholder and the date of his security agreement, and cause the certificate, application and the required fee to be delivered to the lienholder.

(b) The lienholder shall immediately cause the certificate, application and required fee to be mailed or delivered to a county tax collector or a designated agent.

(c) Upon request of the owner or subordinate lienholder, a lienholder in possession of the certificate of title shall either mail or deliver the certificate to the subordinate lienholder for delivery to a county tax collector or a designated agent or, upon receipt from the subordinate lienholder of the owner's application and the required fee, mail or deliver them to a county tax collector or a designated agent with the certificate. The delivery of the certificate does not affect the rights of the first lienholder under his security agreement.

(d) Upon receipt of the certificate of title, application and the required fee, the State Tax Commission shall either endorse on the certificate or issue a new certificate containing the name and address of the new lienholder, and mail the certificate to the first lienholder named in it.

(2) Information evidencing a bank or lending institution's lien or other security interest in a motor vehicle's, manufactured home's or mobile home's certificate of title may be transferred by electronic means as provided in Section 63-21-16.

HISTORY: Codes, 1942, § 8125-42; Laws, 1968, ch. 531, § 22; Laws, 1970, ch. 483, § 7; Laws, 1999, ch. 556, § 23, eff from and after July 1, 1999.

Cross References — Security interests under Uniform Commercial Code, see §§ 75-9-101 et seq.

JUDICIAL DECISIONS

1. In general.

Section 63-21-45 does not require the lienholder personally to mail or deliver the papers to the issuing agent, nor does it imply loss of lien upon failure to follow its directive. South Mississippi Finance Co. v. Mississippi State Tax Com., 605 So. 2d 736, 1992 Miss. LEXIS 317 (Miss. 1992).

§ 63-21-47. Assignment of security interest by lienholder.

A lienholder may assign, absolutely or otherwise, his security interest in the vehicle, manufactured home or mobile home to a person other than the owner without affecting the interest of the owner or the validity of the security interest. However, any person without notice of the assignment is protected in dealing with the lienholder as the holder of the security interest and the lienholder remains liable for any obligations as lienholder until the assignee is named as lienholder on the certificate in the manner prescribed by the State Tax Commission.

The commission shall file each assignment received by the commission with the required fee, and note the assignee as lienholder upon the record of notices of security interests maintained by the commission.

HISTORY: Codes, 1942, § 8125-43; Laws, 1968, ch. 531, § 23; Laws, 1999, ch. 556, § 24, eff from and after July 1, 1999.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Cross References — Effect of assignment of contract rights under Uniform Commercial Code, generally, see § 75-9-318.

§ 63-21-49. Procedure upon release of security interest.

(1) Upon the satisfaction of a security interest in a vehicle, manufactured home or mobile home for which the certificate of title is in the possession of the lienholder, he shall, within ten (10) days after demand and, in any event,

within thirty (30) days, execute a release of his security interest, in the space provided therefor on the certificate or as the State Tax Commission prescribes, and mail or deliver the certificate and release to the next lienholder named therein, or, if none, to the owner or any person who delivers to the lienholder an authorization from the owner to receive the certificate. The owner other than a dealer holding the vehicle, manufactured home or mobile home for resale, shall promptly cause the certificate and release to be mailed or delivered to the commission, who shall release the lienholder's rights on the certificate or issue a new certificate.

(2) Upon the satisfaction of a security interest in a vehicle, manufactured home or mobile home for which the certificate of title is in the possession of a prior lienholder, the lienholder whose security interest is satisfied shall within ten (10) days after demand and, in any event, within thirty (30) days execute a release in the form the commission prescribes and deliver the release to the owner or any person who delivers to the lienholder an authorization from the owner to receive it. The lienholder in possession of the certificate of title shall either deliver the certificate to the owner, or the person authorized by him, for delivery to the commission or, upon receipt of the release, mail or deliver it with the certificate to the commission who shall release the subordinate lienholder's rights on the certificate or issue a new certificate.

(3) Upon receipt of the aforementioned releases of security interests, the commission shall file each release in the manner prescribed by the commission and note the same upon the records of notices of security interests maintained by it.

HISTORY: Codes, 1942, § 8125-44; Laws, 1968, ch. 531, § 24; Laws, 1999, ch. 556, § 25, eff from and after July 1, 1999.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Cross References — Release of collateral under Uniform Commercial Code generally, see § 75-9-406.

JUDICIAL DECISIONS

1. Violation of automatic stay.

Where creditor willfully violated the automatic stay by repossessing debtors' vehicle, an award of punitive damages was warranted, as creditor's actions evidenced a blatant disregard for the bankruptcy process and a pattern of disrespect for the court. Amount of punitive damages awarded ensured that creditor's security interest in the vehicle was cancelled; thus, creditor was required to release his lien on the vehicle and deliver the certificate of title to debtors in accordance with Mississippi law, and debtors' objection to the proof of claim was granted. In re Adams, 516 B.R. 361, 2014 Bankr. LEXIS 3575 (Bankr. S.D. Miss. 2014).

§ 63-21-51. Duty of lienholder named in notice of security interest to disclose security agreement and secured indebtedness.

A lienholder named in a notice of security interest filed by the State Tax Commission shall, upon written request of the owner or of another lienholder named on the certificate, disclose any pertinent information as to his security agreement and the indebtedness secured by it.

HISTORY: Codes, 1942, § 8125-45; Laws, 1968, ch. 531, § 25; Laws, 2001, ch. 596, § 67, eff from and after July 1, 2001.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

§ 63-21-53. Perfection of unsatisfied security interest in previously registered vehicle.

If a security interest in a previously registered vehicle is perfected under any other applicable law of this state as of August 9, 1968, and if a security interest in a previously registered manufactured home or mobile home is perfected under any other applicable law of this state as of July 1, 1999, the security interest continues perfected until its perfection lapses under the law under which it was perfected. This would apply only to vehicles, manufactured homes or mobile homes not required to be titled under this chapter.

HISTORY: Codes, 1942, § 8125-51; Laws, 1968, ch. 531, § 31; Laws, 1999, ch. 556, § 26, eff from and after July 1, 1999.

§ 63-21-55. Exclusivity of procedure in chapter for perfecting and giving notice of security interests.

Except as provided in Section 63-21-53, the method provided in this chapter of perfecting and giving notice of security interests subject to this chapter is exclusive. Security interests subject to this chapter are hereby exempted from the provisions of law which otherwise require or relate to the filing and recording of instruments creating or evidencing security interests.

HISTORY: Codes, 1942, § 8125-46; Laws, 1968, ch. 531, § 26, eff from and after passage (approved August 9, 1968).

§ 63-21-57. Filing and recording of notices of security interests; examination of record prior to issuance or reissuance of certificate of title.

The Department of Revenue shall file each notice of security interest received by the department with the required fee and maintain a record of all notices of security interests filed by the department:

(a) Alphabetically, under the name of the owner;

(b) Under the vehicle, manufactured home or mobile home identification number;

(c) Under the certificate of title number; and

(d) In the discretion of the department, by any other method it determines.

The department, before issuing or reissuing a certificate of title, shall check the name of the owner and the certificate of title number of the vehicle, manufactured home or mobile home against the record above provided for.

The recordkeeping requirements are in addition to the recordkeeping requirements set forth in Section 63-21-17 and Section 63-21-37. The records required to be maintained by Section 63-21-17 shall be maintained indefinitely.

HISTORY: Codes, 1942, § 8125-52; Laws, 1968, ch. 531, § 32; Laws, 1999, ch. 556, § 27, eff from and after July 1, 1999; Laws, 2018, ch. 401, § 10, eff from and after January 1, 2019.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Cross References — Filing of security interests under the Uniform Commercial Code, see §§ 75-9-401 et seq.

§ 63-21-59. Suspension or revocation of certificate of title.

The State Tax Commission shall suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard, if the commission finds:

(a) The certificate of title was fraudulently procured or erroneously issued, or

(b) The vehicle, manufactured home or mobile home has been scrapped, dismantled or destroyed.

Suspension or revocation of a certificate of title does not in itself affect the validity of a security interest noted on it.

When the commission suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the commission.

The commission may seize and impound any certificate of title which has been suspended or revoked.

HISTORY: Codes, 1942, § 8125-47; Laws, 1968, ch. 531, § 27; Laws, 1999, ch. 556, § 28, eff from and after July 1, 1999.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

JUDICIAL DECISIONS

1. Ownership.

Heirs' argument that a decedent's girlfriend failed to establish the elements of an inter vivos gift by clear and convincing evidence failed because the burden of proof was on the heirs to disprove her rights to a truck; the girlfriend had full ownership rights of the truck from the time of the title application and when it was issued from the State Tax Commission (now Department of Revenue) because the truck was titled to her and the decedent. Amos v. Brown (In re Estate of Brown), 293 So. 3d 851, 2019 Miss. App. LEXIS 585 (Miss. Ct. App. 2019).

§ 63-21-61. Repealed.

Repealed by Laws, 2005, ch. 499, § 36 effective from and after July 1, 2005.

§ 63-21-61. [Codes, 1942, § 8125-49; Laws, 1968, ch. 531, § 29; Laws, 1999, ch. 556, § 29, eff from and after July 1, 1999]

Editor's Notes — Former § 63-21-61 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 63-21-63. Schedule of fees.

There shall be paid to the Department of Revenue for issuing and processing documents required by this chapter, fees for motor vehicles according to the following schedule:

(a) Each application for certificate of title issued under Section 63-21-9(2)	$ 9.00
(b) Each application for certificate of title not issued under Section 63-21-9(2)	9.00
(c) Each application for replacement or corrected certificate of title	9.00
(d) Each suspension or revocation of certificate of title	9.00
(e) Each notice of security interest	9.00
(f) Each release of security interest	9.00
(g) Each assignment by lienholder	9.00
(h) Each application for information as to the status of the title of a vehicle	9.00

The designated agent may add the sum of One Dollar ($1.00) to each document processed for which a fee is charged to be retained as his commission for services rendered. All other fees collected shall be remitted to the department.

If more than one (1) transaction is involved in any application on a single vehicle and if supported by all required documents, the fee charged by the department and by the designated agent for processing and issuing shall be considered as only one (1) transaction.

HISTORY: Codes, 1942, § 8125-53; Laws, 1968, ch. 531, § 33; Laws, 1980, ch.

427, § 2; Laws, 2001, ch. 596, § 68; Laws, 2005, ch. 335, § 4; Laws, 2010, ch. 496, § 1, eff from and after July 1, 2010.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

§ 63-21-64. Fees paid to Department of Revenue for issuing and processing necessary documents.

There shall be paid to the Department of Revenue for issuing and processing documents required by this chapter, fees for manufactured homes or mobile homes according to the following schedule:

(a) Each application for certificate of title	$ 9.00
(b) Each application for replacement or corrected certificate of title	9.00
(c) Each suspension or revocation of certificate of title	9.00
(d) Each notice of security interest	9.00
(e) Each release of security interest	9.00
(f) Each assignment by lienholder	9.00
(g) Each application for information as to the status of the title of a manufactured home or mobile home	9.00
(h) Each application for retirement, destruction or severance of title pursuant to Section 63-21-30	9.00

The designated agent may add the sum of One Dollar ($1.00) to each document processed for which a fee is charged to be retained as his commission for services rendered. All other fees collected shall be remitted to the department.

If more than one (1) transaction is involved in any application on a single manufactured home or mobile home and if supported by all required documents, the fee charged by the department's designated agent for processing and issuing shall be considered as only one (1) transaction.

HISTORY: Laws, 1999, ch. 556, § 32; Laws, 2010, ch. 496, § 2, eff from and after July 1, 2010; Laws, 2018, ch. 401, § 11, eff from and after January 1, 2019.

§ 63-21-65. Disposition of fees.

The Department of Revenue shall deposit the fees collected under this chapter into a special fund that is created in the State Treasury to the credit of the department. As much of those fees as appropriated by the Legislature shall be used by the department to defray the cost of carrying out the duties of the department, including the maintenance of the automated statewide motor vehicle and manufactured housing registration system.

HISTORY: Codes, 1942, § 8125-54; Laws, 1968, ch. 531, § 34; Laws, 1980, ch. 427, § 3; Laws, 1981, ch. 309, § 5; Laws, 1983, ch. 320, § 2; Laws, 1984, ch. 488, § 303; Laws, 1989, ch. 393, § 1; Laws, 1999, ch. 556, § 30; Laws, 2010, ch. 496, § 3, eff from and after July 1, 2010.

Cross References — Provisions relating to the Mississippi Department of Information Technology Services, see §§ 25-53-1 et seq.

Requirement that portion of motor vehicle registration or tag fees be paid into the special fund in the state treasury established in this section, see § 27-19-99.

Automated statewide motor vehicle title registration system, generally, see § 63-21-18.

§ 63-21-67. Use of duplicate copy of application for certificate of title as permit to operate motor vehicle.

The rules and regulations promulgated by the State Tax Commission shall make suitable provisions for the use by an applicant of the duplicate copy of his application for a certificate of title to serve as a permit for the operation of the motor vehicle or the use and occupation of a manufactured home or mobile home described in the application until the commission either issues the certificate of title of such motor vehicle, manufactured home or mobile home or refuses to issue the certificate. The commission and every designated agent receiving an application for the certificate of title, when the provisions of this chapter have been otherwise complied with, shall deliver to the applicant the duplicate copy of his application which shall contain a suitable permit for the purposes mentioned in this paragraph.

In the event the commission refuses to issue the certificate of title the applicant shall, immediately upon receiving written notice from the commission that such certificate will not be issued for the reason or reasons stated in the notice, deliver or mail to the commission by registered mail the duplicate copy of his application containing the permit mentioned in the previous paragraph of this section and, in the case of a vehicle, the current privilege license tag which was issued for the vehicle. The motor vehicle, manufactured home or mobile home described in said application shall not be operated on the highways or other public places of this state or used or occupied after the applicant receives notice that the certificate will not be issued unless its operation is subsequently authorized by the commission either by the issuance of a new permit or by a certificate of title. If for any reason the said duplicate copy of the application for certificate of title and, in the case of a vehicle, the current privilege license tag which was issued for the vehicle in question is not received by the commission within ten (10) calendar days after the commission mails written notice to the applicant that it will not issue the certificate of title applied for, the commission or, at the request of the commission, any state highway patrolman, sheriff or other peace officer of this state, is authorized and empowered to require and compel the surrender of said duplicate copy of the application for certificate of title and, in the case of a vehicle, the said current privilege license tag. The commission, after it obtains possession of said duplicate copy of application for certificate of title and, in the case of a vehicle, said current privilege license tag, is authorized to retain same until it is satisfied that said applicant is entitled to receive a certificate of title of the vehicle, manufactured home or mobile home in question.

HISTORY: Codes, 1942, § 8125-29; Laws, 1968, ch. 531, § 9; Laws, 1999, ch. 556, § 31, eff from and after July 1, 1999.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

§ 63-21-69. Application for and issuance of certificate of title and privilege license upon acquisition of vehicle.

When a vehicle subject to titling under this chapter is acquired from a dealer or another person by sale or otherwise, the new owner of the vehicle shall have seven (7) full working days, exclusive of the date of delivery, within which to make application for the required privilege license tag.

No privilege license tag shall be issued by any tax collector or the State Tax Commission if the vehicle is subject to titling under this chapter unless the vehicle owner makes an application therefor and shall thereupon tender his application for certificate of title with the application for a privilege license. If, however, the vehicle owner already has a certificate of title, then the original certificate or, if his original certificate be in the hands of a lienholder, then his duplicate certificate or other official document as prescribed by the State Tax Commission shall be tendered to the tax collector or the State Tax Commission. The tax collector or the State Tax Commission, as the case may be, shall thereupon enter the number of the application or certificate on the privilege license application and on the privilege license receipt.

The provisions and requirements of this section implement the provisions and requirements of Section 27-19-59 and Section 27-19-61. Nothing contained in this section or in this chapter shall in any way amend or supersede any of the existing statutes of this state or any of the provisions or requirements of such statutes with respect to the registration of vehicles and making applications for privilege licenses for vehicles. However, the State Tax Commission shall by suitable rules and regulations provide for the implementation of the requirements of this section and this chapter with the requirements of existing statutes with respect to the registration of vehicles and with respect to obtaining privilege licenses therefor.

HISTORY: Codes, 1942, § 8125-57; Laws, 1968, ch. 531, § 37; Laws, 1977, ch. 484, § 15; Laws, 1987, ch. 338, § 2, eff from and after July 1, 1987.

JUDICIAL DECISIONS

1. Withholding certificate of title.

Creditor, a vehicle dealer, exercised control over debtor's vehicle in violation of the automatic stay by refusing to furnish him with an application for a new certificate of title as required by Mississippi Motor Vehicle and Manufactured Housing Title Law, even though debtor's counsel made him aware of the bankruptcy filing and automatic stay. Creditor's passive act of holding on to the existing certificate of title prevented debtor from lawfully driving the vehicle, which had the same effect as if creditor had repossessed the vehicle pre-petition and refused to return it post-petition. Parker v. Smith (In re Parker), 2014 Bankr. LEXIS 58 (Bankr. S.D. Miss. Jan. 6, 2014).

OPINIONS OF THE ATTORNEY GENERAL

A person may retitle a vehicle without purchasing a new tag. Bolen, May 16, 2002, A.G. Op. #02-0256.

§ 63-21-70. Special license plate and windshield decals indicating impaired or limited ability to communicate with law enforcement.

(1) Upon application by any legal resident of the State of Mississippi with a health condition or disability which limits or impairs the ability to effectively communicate with law enforcement, the department shall prepare and issue through the county tax collectors a special decal that is to be placed on license plates and on front left windshield corners bearing that indication for any vehicles that are registered in the applicant's name or otherwise authorized to be applied for by the applicant.

(2) The initial application shall be accompanied by the certification of a Mississippi licensed physician or Mississippi licensed psychologist who will prescribe that (a) the applicant or the applicant's child, parent or spouse has a physical or mental health condition that will impair the ability to effectively communicate with law enforcement; and (b) the physician or psychologist has determined that the applicant or the applicant's child, parent or spouse will have the communication impairment for at least five (5) years. The department shall prepare and issue to the tax collectors of the various counties, decals for placement on license plates.

(3) A person to whom the special decal is issued may retain the special decal and may renew it on the issuance of a new license plate by submitting to the county tax collector, on or before its expiration, the certification of a Mississippi licensed physician or Mississippi licensed psychologist who will prescribe that (a) the applicant or the applicant's child, parent or spouse has a physical or mental health condition that will impair the ability to effectively communicate with law enforcement; and (b) the physician or psychologist has determined that the applicant or the applicant's child, parent or spouse will have the communication impairment for at least five (5) years.

(4) Information supplied to the department or to the county tax collector is for confidential use and may not be disclosed to any person.

HISTORY: Laws, 2020, ch. 442, § 1, eff from and after January 1, 2021.

Editor's Notes — Laws of 2020, ch. 442, § 3, effective January 1, 2021, provides:

"SECTION 3. Section 1 of this act shall be codified in Title 63, Chapter 21, Mississippi Code of 1972. Section 2 of this act shall be codified in Title 45, Chapter 6, Mississippi Code of 1972."

§ 63-21-71. Penalties for violations of chapter generally.

It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by the law of this state declared to be a felony.

Every person convicted of a misdemeanor for the violation of any of the provisions of this chapter shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment for not more than six months, or by both such fine and imprisonment.

HISTORY: Codes, 1942, § 8125-55; Laws, 1968, ch. 531, § 35, eff from and after passage (approved August 9, 1968).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Based on this section and Section 63-21-73, any violation under Title 63, Chapter 21 of the Mississippi Code of 1972, as amended, is a misdemeanor unless specifically declared to be a felony by some other statute. Head, May 10, 1996, A.G. Op. #96-0289.

§ 63-21-73. Penalty for felonies.

Any person who is convicted of a violation of any of the provisions of this chapter herein or by the laws of this state declared to constitute a felony shall be punished by imprisonment for not less than one year nor more than five years, or by a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00), or by both such fine and imprisonment.

HISTORY: Codes, 1942, § 8125-56; Laws, 1968, ch. 531, § 36, eff from and after passage (approved August 9, 1968).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Based on Section 63-21-71 and this section, any violation under Title 63, Chapter 21 of the Mississippi Code of 1972, as amended, is a misdemeanor unless specifically declared to be a felony by some other statute. Head, May 10, 1996, A.G. Op. #96-0289.

§ 63-21-75. Enforcement of chapter.

The Department of Revenue is charged with the enforcement of the provisions of this chapter and the department is hereby authorized and empowered to call upon any and all law enforcement agencies and officers of this state for such assistance as it may deem necessary in order to assure such enforcement. It shall be the duty of such law enforcement agencies and officers to render such assistance to the Department of Revenue when called upon by the department to so do.

HISTORY: Codes, 1942, § 8125-61; Laws, 1968, ch. 531, § 41; Laws, 2001, ch. 596, § 69; Laws, 2009, ch. 492, § 125, eff from and after July 1, 2010.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

§ 63-21-77. Construction of chapter.

Section headings contained in this chapter shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any section of this chapter.

HISTORY: Codes, 1942, § 8125-58; Laws, 1968, ch. 531, § 38, eff from and after passage (approved August 9, 1968).

ARTICLE 2.

PROCEDURES FOR FORFEITURE OF VEHICLES SEIZED IN MOTOR VEHICLE SCRAPPING OR DISMANTLING VIOLATIONS.

Sec.	
63-21-101.	Seizure of motor vehicle, trailer or similar conveyance for violations of Section 63-21-39.
63-21-103.	Vehicles subject to seizure; notice of intent to forfeit seized vehicle; petition to contest forfeiture.
63-21-105.	Forfeiture procedures.
63-21-107.	Answer; hearing.
63-21-109.	Sale of forfeited vehicle; use of forfeited vehicles by law enforcement agencies; distribution of proceeds from liquidation of forfeited vehicle.
63-21-111.	Exclusiveness of remedy.

§ 63-21-101. Seizure of motor vehicle, trailer or similar conveyance for violations of Section 63-21-39.

Any motor vehicle, trailer or similar conveyance used to transport another motor vehicle or crushed motor vehicle sold in violation of Section 63-21-39 or otherwise used to aid in the commission of a violation of Section 63-21-39 may be seized by a law enforcement agency and is subject to forfeiture ordered by the court in the manner and under the terms and conditions set out for forfeitures of a vehicle, trailer or similar conveyance in this article; however, no conveyance is subject to forfeiture under this article by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent. If the seizing law enforcement agency has reason to believe that the conveyance is a leased or rented conveyance, then the seizing law enforcement agency shall notify the owner of the conveyance as soon as practicable after the seizure. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

HISTORY: Laws, 2013, ch. 570, § 2, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference near the beginning of the section by substituting "violation of Section 63-21-69" for "violation of this act." The Joint Committee ratified the correction at its August 1, 2013, meeting.

§ 63-21-103. Vehicles subject to seizure; notice of intent to forfeit seized vehicle; petition to contest forfeiture.

(1) When any vehicle, trailer or similar conveyance is used in the commission of a violation of Section 63-21-39, the vehicle, trailer or similar conveyance so used is subject to seizure by the applicable law enforcement agency and the vehicle, trailer or similar conveyance may be forfeited by the administrative forfeiture procedures provided for in Sections 63-21-101 through 63-21-107.

(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized vehicle, trailer or similar conveyance administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to this section.

(3) In the event that notice of intention to forfeit the seized vehicle, trailer or similar conveyance administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

(a) A description of the vehicle, trailer or similar conveyance;

(b) The approximate value of the vehicle, trailer or similar conveyance;

(c) The date and place of the seizure;

(d) The connection between the vehicle, trailer or similar conveyance and the violation of Section 63-21-39;

(e) The instructions for filing a request for judicial review; and

(f) A statement that the vehicle, trailer or similar conveyance will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Any person claiming an interest in a vehicle, trailer or similar conveyance which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought, in order to claim an interest in the vehicle, trailer or similar conveyance. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.

(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject vehicle, trailer or similar conveyance and the forfeited vehicle, trailer or similar conveyance shall be used, distributed or disposed of in accordance with the provisions of Section 63-21-107.

HISTORY: Laws, 2013, ch. 570, § 3, eff from and after July 1, 2013.

§ 63-21-105. Forfeiture procedures.

(1) Except as otherwise provided in Section 63-21-101, when any vehicle, trailer or similar conveyance is seized under this article, proceedings under this section shall be instituted within thirty (30) days from the date of seizure or the subject vehicle, trailer or similar conveyance shall be immediately returned to the party from whom seized.

(2) A petition for forfeiture shall be filed in the name of the county or the municipality and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized vehicle, trailer or similar conveyance is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized vehicle, trailer or similar conveyance is within the jurisdictional limits of the county court as set forth in Section 9-9-21, Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the vehicle, trailer or similar conveyance, if address is known;

(b) Any secured party who has a registered lien or security interest or a lien or security interest of which law enforcement has actual knowledge, if the identity of such secured party can be ascertained by the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3) and (4) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in a vehicle, trailer or similar conveyance in the nature of a security interest of whom the local law enforcement agency has actual knowledge;

(d) Any person in possession of vehicle, trailer or similar conveyance subject to forfeiture at the time that it was seized.

(3) If the vehicle, trailer or similar conveyance is a motor vehicle, trailer or similar conveyance susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle, trailer or similar conveyance has been titled, the local law enforcement agency shall make inquiry of the Mississippi Department of Revenue as to what the records of the department show as to who is the record owner of the vehicle, trailer or similar conveyance and who, if anyone, holds any lien or security interest which affects the vehicle, trailer or similar conveyance.

(4) If the vehicle, trailer or similar conveyance is a motor vehicle, trailer or similar conveyance and is not titled in the State of Mississippi, then the local law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle, trailer or similar conveyance is licensed, and if the vehicle, trailer or similar conveyance is licensed in a state which has in effect a certificate of title law, the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle, trailer or similar conveyance and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle, trailer or similar conveyance.

(5) In the event the answer to an inquiry states that the record owner of the vehicle, trailer or similar conveyance is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, the local law enforcement agency shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the vehicle, trailer or similar conveyance in the nature of a security interest, to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(6) If the owner of the vehicle, trailer or similar conveyance cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the vehicle, trailer or similar conveyance subject to forfeiture at the time that it was seized and the owner of the vehicle, trailer or similar conveyance is unknown, the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ________," filling in the blank space with a reasonably detailed description of the vehicle, trailer or similar conveyance subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice for attachments at law.

(7) No proceedings instituted pursuant to the provisions of this article shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3) through (4) of this section shall be introduced into evidence at the hearing.

HISTORY: Laws, 2013, ch. 570, § 4, eff from and after July 1, 2013.

§ 63-21-107. Answer; hearing.

(1) Except as otherwise provided in Section 63-21-101, an owner of a vehicle, trailer or similar conveyance that has been seized shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the vehicle, trailer or similar conveyance is subject to forfeiture and forfeit the vehicle, trailer or similar conveyance to the local law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the local law enforcement agency or the owner of the vehicle, trailer or similar conveyance, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(2) If the owner of the vehicle, trailer or similar conveyance has filed an answer denying that the vehicle, trailer or similar conveyance is subject to forfeiture, then the burden is on the petitioner to prove that the vehicle, trailer or similar conveyance is subject to forfeiture. However, if an answer has not been filed by the owner of the vehicle, trailer or similar conveyance, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the vehicle, trailer or similar conveyance is subject to forfeiture. The standard of proof placed upon the petitioner in regard to a vehicle, trailer or similar conveyance forfeited under the provisions of this article shall be by a preponderance of the evidence.

(3) At the hearing any claimant of any right, title or interest in the vehicle, trailer or similar conveyance may prove his lien, encumbrance, security interest, or other interest in the nature of a security interest, to be bona fide and created without knowledge or consent that the vehicle, trailer or similar conveyance was to be used so as to cause the vehicle, trailer or similar conveyance to be subject to forfeiture.

(4) If it is found that the vehicle, trailer or similar conveyance is subject to forfeiture, then the judge shall forfeit the vehicle, trailer or similar conveyance to the local law enforcement agency. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the vehicle, trailer or similar conveyance in the nature of a security interest or any holder of a bona fide encumbrance is greater than or equal to the present value of the vehicle, trailer or similar conveyance, the court shall order the vehicle, trailer or similar conveyance released to him. If such interest is less than the present value of the vehicle,

trailer or similar conveyance and if the proof shows that the vehicle, trailer or similar conveyance is subject to forfeiture, the court shall order the vehicle, trailer or similar conveyance forfeited to the local law enforcement agency.

HISTORY: Laws, 2013, ch. 570, § 5, eff from and after July 1, 2013.

§ 63-21-109. Sale of forfeited vehicle; use of forfeited vehicles by law enforcement agencies; distribution of proceeds from liquidation of forfeited vehicle.

(1) Any other vehicle, trailer or similar conveyance that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the vehicle, trailer or similar conveyance to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the vehicle, trailer or similar conveyance present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lienholder, secured party or other party holding an interest in the vehicle, trailer or similar conveyance in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (3) of this section.

(2)(a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes any vehicle, trailer or similar conveyance, that is described in subsection (1) of this section, that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the vehicle, trailer or similar conveyance in the nature of a security interest. Such county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the vehicle, trailer or similar conveyance can be released for its use. The law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it.

(b)(i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.

(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.

(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal vehicle, trailer or similar conveyance.

(3) Any vehicle, trailer or similar conveyance which is forfeited under this article, except as provided in subsections (1) and (2) of this section, shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, one hundred percent (100%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty percent (20%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty percent (20%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(4) The Department of Revenue shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

HISTORY: Laws, 2013, ch. 570, § 6, eff from and after July 1, 2013.

§ 63-21-111. Exclusiveness of remedy.

The forfeiture procedure set forth in this article are the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas or in any other manner.

HISTORY: Laws, 2013, ch. 570, § 7, eff from and after July 1, 2013.

ARTICLE 3.

ABANDONED MANUFACTURED OR MOBILE HOMES.

Sec.
63-21-201. Definitions.
63-21-203. Complaint for disposition of abandoned manufactured or mobile homes.
63-21-205. Filing of complaint constitutes consent by community owner or landowner to temporary easement for removal of manufactured or mobile home and associated personal property.

Sec.
63-21-207. Entry of order naming commissioner and setting date and time of sale.
63-21-209. Oath of commissioner.
63-21-211. Advertisement for sale.
63-21-213. Procedure for sale.
63-21-215. Payment of debt and exercise of possession.
63-21-217. Disbursement of bid amount by commissioner.
63-21-219. Entry of final order.
63-21-221. Submission to Department of Revenue.
63-21-223. Good faith defense of owner of real property to claims of wrongful sale of manufactured or mobile home and associated personal property.

§ 63-21-201. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(a) "Abandoned" means that no person is occupying the manufactured home or mobile home at the present, nor has any person occupied it for the past sixty (60) days, nor has the owner or any representative of the owner informed the community owner or landowner of a reason that the manufactured home or mobile home is not occupied.

(b) "Abandoned manufactured or mobile home" means a manufactured home or mobile home that has been abandoned for at least sixty (60) consecutive days, located on property owned by another community owner or landowner.

(c) "Associated personal property" means any personal property excluding motor vehicles located within or adjacent to the abandoned manufactured or mobile home.

(d) "Commissioner" shall mean a resident of the county where the abandoned manufactured or mobile home is located who, by a sale order issued by a court in a proceeding, shall act pursuant to the sale order, including, but not limited to, advertising the sale, receiving funds paid at any sale ordered by the court of the abandoned manufactured or mobile home and associated personal property, and making all disbursements arising out of the sale with the sale being conducted by the sheriff. The commissioner need not be a disinterested third party and may be counsel or a representative of the community owner or landowner and shall not be disqualified, nor shall the acts of such person be invalid because of the relationship of such person to the community owner or landowner.

(e) "Community" means a contiguous residential real estate development operated by a community owner as one (1) development consisting of six (6) or more lots for lease to the public where at least one (1) of such lots is vacant and may be subject to a lease, lease-purchase or other agreement with the owner of a manufactured or mobile home who may locate such owner's manufactured or mobile home on the lot.

(f) "Community owner" means a person other than the owner of the manufactured or mobile home who owns fee simple or ground leasehold interest in residential real property developed and operated as a community on which an abandoned manufactured or mobile home and any associated personal property is located pursuant to a lease, lease-purchase or other agreement.

(g) "Complaint" means the pleading filed by the community owner or landowner in the proceeding seeking a judicial sale of an abandoned manufactured or mobile home and associated personal property.

(h) "Date of abandonment" means the date on which the community owner or landowner determines that the manufactured or mobile home and associated personal property may be in fact have been vacated by the owner in a manner that may lead to an abandonment.

(i) "Final order" means the final order entered by a court in a proceeding adjudicating the disposition of an abandoned manufactured or mobile home and associated personal property, that confirms the sale of the abandoned manufactured or mobile home and associated personal property or makes other adjudications as deemed appropriate by the court.

(j) "Inventory" means an itemized list of associated personal property with an estimate of value for the sum and not individual component parts of all associated personal property located within or adjacent to a manufactured or mobile home by a disinterested third party with items of like kind being grouped together for inventory purposes.

(k) "Last known address" shall mean the last known address of the owner of an abandoned manufactured or mobile home or any forwarding address or emergency contact address known to the community owner or landowner.

(*l*) "Lien" means an interest, other than a lien for the payment of taxes, on or against an abandoned manufactured home or mobile home or associated personal property imposed by law or by written instrument providing for an indebtedness or obligation of a person secured in a manner that in the event of a default provides the lienholder a right to recover the manufactured home or mobile home or associated personal property or title thereto using lawful means.

(m) "Lienholder" means any person holding a lien on an abandoned manufactured home or mobile home or associated personal property.

(n) "Manufactured home" shall have the meaning set forth in Section 75-49-3(a), Mississippi Code of 1972.

(o) "Mobile home" shall have the meaning set forth in Section 75-49-3(b), Mississippi Code of 1972.

(p) "Necessary party" shall mean the owner, any lienholder, or any other person known to have a lien or claim upon the abandoned manufactured or mobile home or associated personal property except the following who are not to be a party to the proceeding to dispose of the abandoned manufactured or mobile home or associated personal property: any commissioner appointed by the court, County Tax Assessor, County Tax Collector, County Board of Supervisors, County Sheriff or any Deputy Sheriff, State Tax Commission of the State of Mississippi and the Department of Revenue of the State of Mississippi.

(q) "Notice of abandonment" shall mean a written notice by the community owner or landowner to the owner notifying the owner at least thirty

(30) days after the date of abandonment that the manufactured or mobile home and any associated personal property in or adjacent to the abandoned manufactured home or mobile home should be immediately removed or be subject to a judicial finding of abandonment which may lead to a sale of the abandoned manufactured or mobile home and all associated personal property.

(r) "Notice of sale" shall mean the notice advertising the sale of the abandoned manufactured or mobile home.

(s) "Owner" of a manufactured home or mobile home means the person holding legal title to the manufactured home or mobile home.

(t) "Person" means any individual, firm, corporation, partnership, association or other type of business entity.

(u) "Proceeding" shall mean the civil action filed or to be filed in a court of competent jurisdiction depending upon the amount in controversy being the Justice Court, County Court or Chancery Court of the State of Mississippi in the county where the manufactured or mobile home is located seeking relief including the disposition of the abandoned manufactured or mobile home and associated personal property.

(v) "Purchaser" shall mean the successful bidder at the sale of the abandoned manufactured or mobile home and associated personal property who purchases the same.

(w) "Sale order" means an interim order in the proceeding authorizing the sale of the abandoned manufactured or mobile home and associated personal property and addressing other matters in the discretion of the court.

(x) "Sheriff" means the sheriff (or any deputy sheriff appointed by the sheriff) of the county where the abandoned manufactured or mobile home and any associated personal property is located.

(y) "Title" means the writing evidencing ownership by the owner of a manufactured home or mobile home.

(z) "Uninhabitable" means an abandoned manufactured or mobile home where, in the opinion of an independent third party who is an appraiser, contractor or other person familiar with cost of repair of manufactured or mobile homes, the cost to repair to the home to a condition where it is habitable for human occupation as a residence considering the health, safety and general welfare of the occupant, is more than the cost of demolition and removal of the abandoned manufactured or mobile home.

(aa) "Value" in the case of an abandoned manufactured or mobile home shall mean the estimated fair market value of the abandoned manufactured home or mobile home from an independent third party based upon: (i) a written statement from an appraiser or other person familiar with such values; or (ii) a recognized national publisher of values of manufactured homes or mobile homes; provided, however, that if the abandoned manufactured or mobile home is uninhabitable the value shall be based upon a written estimate from a third party of demolition and removal of the abandoned manufactured or mobile home. "Value" in the case of an inventory of personal property means the estimate of the fair market value of the personal property of the owner within or adjacent to an abandoned manufactured home or mobile home based upon similar values that an individual might use in claiming a deduction for United States Income Tax purposes for a charitable contribution of used personal property to a qualified charitable organization for charitable purposes including estimated consignment or thrift shop values for the lot.

HISTORY: Laws, 2021, ch. 376, § 1, eff from and after July 1, 2021.

§ 63-21-203. Complaint for disposition of abandoned manufactured or mobile homes.

Any community owner or landowner, his agent or attorney, may initiate a proceeding by filing a complaint under oath for the disposition of an abandoned manufactured or mobile home and associated personal property, setting forth:

(a) A statement that the abandoned manufactured home or mobile home is abandoned, including the address and county where it is abandoned and the date when it was vacated by the owner in a manner that the community owner or landowner believes led to an abandonment.

(b) A description of the abandoned manufactured home or mobile home, including all reasonably available information as to the year, make, model number and serial number.

(c) A copy of the notice of abandonment sent by the community owner or landowner to the owner at the owner's last known address, on a date at least thirty (30) days after the date of abandonment and at least thirty (30) days before the commencement of the proceeding, and any response thereto.

(d) The value of the abandoned manufactured home or mobile home.

(e) A statement as to whether or not the abandoned manufactured home or mobile home is believed to be uninhabitable and, if so, the statement of the person making such determination and the bid of the person establishing the cost of demolition and removal, which may be one and the same person.

(f) An inventory of any personal property within or adjacent to the abandoned manufactured home or mobile home and a statement of value.

(g) A statement as to the current, delinquent or other status of the personal property taxes on the home.

(h) A statement as to known or presumed owner of the abandoned manufactured or mobile home and the last known address of the owner.

(i) A statement as to the known or presumed liens and lienholders of the abandoned manufactured or mobile home and associated personal property and the amount of such liens.

(j) A statement as to whether the property owner has knowledge of any other person having or asserting a lien or claim upon the abandoned manufactured or mobile home.

(k) A statement that, in addition to the manufactured or mobile home being abandoned, the owner is in breach of a lease, lease-purchase or agreement with the community owner or landowner of the lot on which the manufactured or mobile home is situated and setting out the damages incurred by the community owner or landowner, including any credit for a security or other deposit by the owner.

(*l*) A statement requesting that a commissioner be appointed for the public sale of the abandoned manufactured or mobile home and designating the proposed commissioner by name, address and phone number.

(m) A statement identifying all necessary parties who shall be made defendants and served with process in the time and manner required by law.

(n) Such other statements as may be appropriate under the circumstances.

HISTORY: Laws, 2021, ch. 376, § 2, eff from and after July 1, 2021.

§ 63-21-205. Filing of complaint constitutes consent by community owner or landowner to temporary easement for removal of manufactured or mobile home and associated personal property.

The filing of a complaint by the community owner or landowner shall constitute consent by the community owner or landowner to the purchaser receiving a Bill of Sale from the sheriff exercising an implied temporary easement to remove the manufactured or mobile home and associated personal property in a reasonable manner and for a reasonable time following the entry of the final order. Such purchaser shall repair any damage to the real property caused by such removal leaving the real property in an unreasonable condition and such purchaser shall be liable to the community owner or landowner for unreasonable damage to the real property.

HISTORY: Laws, 2021, ch. 376, § 3, eff from and after July 1, 2021.

§ 63-21-207. Entry of order naming commissioner and setting date and time of sale.

Upon finding that the manufactured or mobile home and associated personal property that are the subject of the complaint are in fact abandoned and have not been claimed and the indebtedness of the community owner or landowner has not been paid in full, the court shall enter an order adjudicating whether or not the manufactured or mobile home is uninhabitable, approving the inventory, approving the sale by the sheriff of the abandoned manufactured or mobile home and the associated personal property as reflected on the inventory and setting a date, time and place for the sale, with the advertisement, determination of liens and financial responsibility for the sale to be the responsibility of the commissioner appointed by the court.

HISTORY: Laws, 2021, ch. 376, § 4, eff from and after July 1, 2021.

§ 63-21-209. Oath of commissioner.

Before the commissioner enters upon the discharge of the commissioner's duties, the commissioner shall take and subscribe an oath before some competent officer, and shall file a copy of the same in the proceeding, that the commissioner will honestly, faithfully and impartially advertise the sale, receive the highest bid, disburse the same and file a report as to such disbursement required by law, and perform the duties required of a commissioner to the best of the commissioner's skill, knowledge and judgment.

HISTORY: Laws, 2021, ch. 376, § 5, eff from and after July 1, 2021.

§ 63-21-211. Advertisement for sale.

The commissioner shall advertise a notice of sale by publication and posting. The notice of sale shall be published one (1) time a week for three (3) weeks prior to the sale in a newspaper published in the county where the manufactured or mobile home is located, or, if none such paper is so published in said county, in some paper having a general circulation therein. The notice of sale shall be posted by the commissioner at the courthouse of the county where the abandoned manufactured or mobile home is located. The notice of sale shall contain a detailed description of the abandoned manufactured or mobile home and a general description of the associated personal property to be sold and the date, time and place of the sale. Upon request, the commissioner shall provide the inventory to any interested person. The commissioner shall mail a copy of the notice of sale by United States mail postage prepaid to the last known address of the owner as shown in the complaint if the owner has not appeared as a party to the proceeding.

HISTORY: Laws, 2021, ch. 376, § 6, eff from and after July 1, 2021.

§ 63-21-213. Procedure for sale.

The sale shall be made at the place, on the date and during the time set by the court.

The sheriff shall conduct the sale and shall charge a reasonable fee for conducting the sale with the fee to be applied to the sheriff's operating fund. The abandoned manufactured or mobile home and associated personal property shall be sold for cash to the highest bidder. Each bidder shall submit a bid in at least a minimum amount that will pay the sheriff's fee, the tax collector for any past due taxes, the lien creditors in their order of priority and all costs of court and commissioner's fees. The community owner or landowner may purchase at any sale, and any such sale shall not be invalid because of the relationship of such purchaser to the community owner or landowner or any lienholder. The community owner or landowner and any lienholder may credit bid by deducting the amount due to such bidder from the bidder's bid. The highest bid accepted by the sheriff at the sale shall be paid to the commissioner. The sheriff, promptly upon completion of the sale, shall deliver to the commissioner a report of the sale, including a copy of the notice of sale authorizing the sale of the abandoned manufactured or mobile home and a list of the associated personal property sold along with the same, the total amount paid, the name of the commissioner to whom it was paid, the name of the sheriff conducting the sale and the name of the person to whom the sale was made. The sheriff shall execute and deliver a bill of sale to the purchaser who shall be the highest bidder with the commissioner to witness the bill of sale. The signature by the sheriff and the commissioner to the bill of sale is a certification by them that the sale was conducted pursuant to the sale order and to the highest bidder for cash. The bill of sale may be conditioned upon the entry by the court of the final order. If there is no bidder at the sale, the sheriff's fees shall be paid by the community owner or landowner with such costs to be assessed as costs of court, upon filing of proof of payment of the same in the proceeding. If there is no bid, the community owner or landowner may seek a new sale order providing for another sale of the manufactured or mobile home and associated personal property.

HISTORY: Laws, 2021, ch. 376, § 7, eff from and after July 1, 2021.

§ 63-21-215. Payment of debt and exercise of possession.

Any interested party may, at any time before a sale is made under the terms and provisions of the sale order, stop a threatened sale of a manufactured or mobile home by paying the amount due to the community owner or landowner on the amount actually past due rather than any amount accelerated, along with all accrued costs, attorneys' fees, commissioners' fees, sheriffs' fees, such taxes due and not paid, with proper interest and penalties thereon. Any such payment or payments shall reinstate, according to the terms of the agreement with the community owner or landowner, the amount so accelerated, the same as if such amount had not been accelerated or put in default.

HISTORY: Laws, 2021, ch. 376, § 8, eff from and after July 1, 2021.

§ 63-21-217. Disbursement of bid amount by commissioner.

The commissioner shall disburse the bid proceeds as follows: first, to the sheriff for the sheriff's fee; second, to the tax collector for any past due taxes, liens and assessments; third, to the lien creditors in their order of priority; fourth, to the community owner or landowner for the indebtedness, interest and attorney's fees owed thereto and all costs of court and commissioner's fees; and fifth, to the owner, or if the abandoned manufactured or mobile home was adjudicated by the sale order as uninhabitable, then to the community owner or landowner in the amount of the estimate of demolition and removal. If the owner has appeared in the proceeding or was served with process other than by publication, any amount to be paid to the owner and not paid directly to the owner may be paid by interpleading the same with the clerk of court where the proceeding is pending for the benefit of the owner. If the owner has not appeared in the proceeding and service of process was obtained by publication, then the commissioner shall pay the same to the Treasurer of the State of Mississippi as unclaimed funds on such forms as may be prescribed by the Treasurer. The commissioner shall have the right to delay disbursement of the bid amount until the court has entered a final order.

HISTORY: Laws, 2021, ch. 376, § 9, eff from and after July 1, 2021.

§ 63-21-219. Entry of final order.

Upon the commissioner filing a report with the court attaching a copy of the sheriff's report of the sale and a list of the actual or proposed disbursements from the accepted bid, the court may enter a final order approving the sale and the disbursement of the proceeds from the accepted bid and include such other provisions as deemed appropriate by the court. The court may enter any other order finally disposing of the proceeding, including an order of dismissal.

HISTORY: Laws, 2021, ch. 376, § 10, eff from and after July 1, 2021.

§ 63-21-221. Submission to Department of Revenue.

The purchaser shall submit a copy of the Bill of Sale and the Final Order to the Department of Revenue along with such forms as may be prescribed by it for the issuance of a new title to the purchaser.

HISTORY: Laws, 2021, ch. 376, § 11, eff from and after July 1, 2021.

§ 63-21-223. Good faith defense of owner of real property to claims of wrongful sale of manufactured or mobile home and associated personal property.

A community owner or landowner who believes in good faith that the manufactured or mobile home and associated personal property that was the subject of a proceeding to dispose of the same was in fact abandoned shall not be liable for any damages whatsoever to the owner or a lienholder or other interested person arising from the proceedings provided the owner served process by publication to all unknown persons having an interest in the manufactured or mobile home and associated personal property.

HISTORY: Laws, 2021, ch. 376, § 12, eff from and after July 1, 2021.

ARTICLE 4.

TRANSFER OF INTEREST IN MOTOR VEHICLE TO DESIGNATED BENEFICIARY ON DEATH OF OWNER

Sec.
63-21-251. Definitions.

Sec.
63-21-253. Transfer of owner's interest in motor vehicle on owner's death; designation of beneficiary.
63-21-255. Beneficiary designation by joint owners with right of survivorship.
63-21-257. Effect of beneficiary designation during motor vehicle owner's life.
63-21-259. Effect of death of motor vehicle owner on interest in vehicle.
63-21-261. Designation of beneficiary; procedure; requirements.

§ 63-21-251. Definitions.

The following terms shall have the following meanings, unless the context clearly indicates otherwise:

(a) "Beneficiary designation" means the designation by an owner of a motor vehicle of a beneficiary of the vehicle as provided by Section 63-21-261.

(b) "Designated beneficiary" means a person designated as a beneficiary of an owner's interest in a motor vehicle under Section 63-21-261.

(c) "Joint owner with right of survivorship" or "joint owner" means a person who owns a motor vehicle concurrently with one or more other persons with a right of survivorship.

(d) "Motor vehicle" shall have the same meaning as the term as defined in Section 63-21-5(*l*).

HISTORY: Laws, 2022, ch. 413, § 1, eff from and after July 1, 2022.

§ 63-21-253. Transfer of owner's interest in motor vehicle on owner's death; designation of beneficiary.

(1) An owner of a motor vehicle may transfer the owner's interest in the motor vehicle to a sole beneficiary effective on the owner's death by designating a beneficiary as provided by Section 63-21-261.

(2) A beneficiary designation is:

(a) Subject to Section 63-21-255, revocable and may be changed at any time without the consent of the designated beneficiary as provided by Section 63-21-261;

(b) A nontestamentary instrument; and

(c) Effective without:

(A) Notice or delivery to or acceptance by the designated beneficiary during the owner's life; or

(B) Consideration.

(3) A will may not revoke or supersede a beneficiary designation, regardless of when the will is made.

(4) A designated beneficiary may disclaim the designated beneficiary's interest in the motor vehicle as provided by applicable law.

HISTORY: Laws, 2022, ch. 413, § 2, eff from and after July 1, 2022.

§ 63-21-255. Beneficiary designation by joint owners with right of survivorship.

(1) If a motor vehicle that is the subject of a beneficiary designation is

owned by joint owners with right of survivorship, the beneficiary designation must be made by all of the joint owners.

(2) A beneficiary designation made by joint owners with right of survivorship:

(a) May be revoked or changed as provided by Section 63-21-261, only if it is revoked or changed by all of the joint owners; and

(b) May be revoked or changed by the last surviving joint owner as provided by Section 63-21-261.

HISTORY: Laws, 2022, ch. 413, § 3, eff from and after July 1, 2022.

§ 63-21-257. Effect of beneficiary designation during motor vehicle owner's life.

During a motor vehicle owner's life, a beneficiary designation does not:

(a) Affect an interest or right of the owner or owners making the designation, including the right to transfer or encumber the motor vehicle that is the subject of the designation;

(b) Create a legal or equitable interest in favor of the designated beneficiary in the motor vehicle that is the subject of the designation, even if the beneficiary has actual or constructive notice of the designation;

(c) Affect an interest or right of a secured or unsecured creditor or future creditor of the owner or owners making the designation, even if the creditor has actual or constructive notice of the designation; or

(d) Affect an owner's or the designated beneficiary's eligibility for any form of public assistance, subject to applicable federal law.

HISTORY: Laws, 2022, ch. 413, § 4, eff from and after July 1, 2022.

§ 63-21-259. Effect of death of motor vehicle owner on interest in vehicle.

(1) On the death of the owner of a motor vehicle that is the subject of a beneficiary designation, the following rules apply to an interest in the motor vehicle:

(a) If the designated beneficiary survives the owner making the designation by one hundred twenty (120) hours, the interest in the motor vehicle is transferred to the designated beneficiary; and

(b) If the designated beneficiary fails to survive the owner making the designation by one hundred twenty (120) hours, the share of the designated beneficiary lapses and is subject to and passes as if the beneficiary designation were a devise made in a will.

(2) If an owner is a joint owner with right of survivorship who is survived by one or more other joint owners, the motor vehicle that is the subject of the beneficiary designation belongs to the surviving joint owner or owners. If an owner is a joint owner with right of survivorship who is the last surviving joint owner, the beneficiary designation is effective.

(3) A designated beneficiary takes the motor vehicle subject to all encumbrances, assignments, contracts, liens and other interests to which the vehicle is subject at the owner's or last surviving owner's death, as applicable. The transfer to the designated beneficiary does not affect the ability of a lienholder to pursue an existing means of debt collection permitted under the laws of this state.

(4) The transfer to the designated beneficiary upon death is not a taxable event, regardless of the designated beneficiary's relationship to the deceased owner of the motor vehicle.

HISTORY: Laws, 2022, ch. 413, § 5, eff from and after July 1, 2022.

§ 63-21-261. Designation of beneficiary; procedure; requirements.

(1) The owner of a motor vehicle may designate a sole beneficiary to whom the owner's interest in the vehicle transfers on the owner's death as provided by this article, by submitting an application for title with the designation. To be effective, the designation must state that the transfer of an interest in the vehicle to the designated beneficiary is to occur at the transferor's death.

(2) The legal name of a beneficiary designated under this section must be included on the title.

(3) The department shall transfer title of a motor vehicle to a beneficiary designated under this section for the vehicle if the beneficiary submits:

(a) An application for title not later than the 180th day after the date of the owner's death or, if the vehicle is owned by joint owners, the last surviving owner's death, as applicable; and

(b) Satisfactory proof of the death of the owner or owners, as applicable.

(4) A beneficiary designation may be changed or revoked by submitting a new application for title.

(5) A beneficiary designation or a change or revocation of a beneficiary designation made on an application for title of a motor vehicle that has not been submitted to the department before the death of a vehicle's owner or owners who made, changed, or revoked the designation, as applicable, is invalid.

(6) The Department of Revenue may adopt rules to administer this section.

HISTORY: Laws, 2022, ch. 413, § 6, eff from and after July 1, 2022.

CHAPTER 23.

ABANDONED MOTOR VEHICLES

Sec.

63-23-1. Purpose of chapter.

63-23-3. "Abandoned motor vehicle" defined.

63-23-5. Sale or disposal of vehicle generally; notification of lienholders; report of sale; disposition of proceeds of sale.

63-23-7. Determination of status of vehicle under title law prior to disposition of vehicle.

63-23-9. Notification of registered owner and lienholders of record prior to disposition of vehicle.

63-23-11. Claim of vehicle prior to sale.

§ 63-23-1. Purpose of chapter.

The intent of this chapter is to provide a means for removing abandoned motor vehicles from the right-of-way and open lands of the state to enhance the beauty of the countryside and the health and welfare of its citizens. It is also to provide a means of relieving automobile dealers, repairmen, and others dealing in motor vehicles from unnecessary storage of deteriorated cars which prevent the use of such floorspace or property for storage for hire or use in their business, and is therefore in the public interest.

HISTORY: Codes, 1942, § 8125-104; Laws, 1970, ch. 481, § 4, eff 60 days after passage (approved April 6, 1970).

RESEARCH REFERENCES

ALR.

State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways. 32 A.L.R.4th 728.

§ 63-23-3. "Abandoned motor vehicle" defined.

For the purposes of this chapter, an "abandoned motor vehicle" shall mean a motor vehicle as defined by the Mississippi Motor Vehicle Title Law:

(a) which has been left by the owner, or some person acting for the owner, with an automobile dealer, repairman or wrecker service for repair or for some other reason and has not been called for by such owner or other person within a period of forty (40) days after the time agreed upon or within forty (40) days after such vehicle is turned over to such dealer, repairman or wrecker service when no time is agreed upon.

(b) which is left unattended on a public street, road or highway or other public property for a period of at least five (5) days.

(c) which has been lawfully towed onto the property of another at the written request of a law enforcement officer and left there for a period of not less than forty (40) days without any one having made claim thereto.

HISTORY: Codes, 1942, § 8125-101; Laws, 1970, ch. 481, § 1; Laws, 1974, ch. 448, § 1, eff from and after passage (approved March 26, 1974).

JUDICIAL DECISIONS

1. In general.

Truck sitting in yard of landlord, whose tenant was in arrears on his rent and had vacated premises, failed to fit any description of abandoned vehicle under statute. Mere fact that truck may have been left on landlord's property and in inoperable condition is of no moment, and for purchaser to profit on this point, he would have to show that truck was abandoned in law, not merely in fact. Hicks v. Thomas, 516 So. 2d 1344, 1987 Miss. LEXIS 2949 (Miss. 1987).

OPINIONS OF THE ATTORNEY GENERAL

If the Department of Public Safety seizes vehicles pursuant to Section 41-29-153 and it decides not to seek forfeiture of the vehicles and notifies the owners to come and get them, if the owners fail to retrieve their vehicles, the Department of Public Safety may not treat the vehicles as abandoned vehicles as defined in this section and may not dispose of them pursuant to Section 63-23-5. Head, August 23, 1995, A.G. Op. #95-0553.

Municipalities cannot immobilize a vehicle for five days and then declare it to be abandoned and sell it; however, if vehicles remain at the impoundment lot or other storage facility for the required 120 days, after due notice has been provided to the owner, they may be deemed abandoned and sold. Pace, March 10, 2000, A.G. Op. #2000-0111.

RESEARCH REFERENCES

ALR.

State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways. 32 A.L.R.4th 728.

§ 63-23-5. Sale or disposal of vehicle generally; notification of lienholders; report of sale; disposition of proceeds of sale.

(1) Any automobile dealer, wrecker service, or repair service owner, or any person or party on whose property a motor vehicle is lawfully towed at the written request of a law enforcement officer, who shall have an abandoned motor vehicle on his property, may sell, free and clear of all claims such motor vehicle by public auction, or if the abandoned motor vehicle has no market value, may dispose of the same after having received at least two (2) written statements from licensed automobile dealers as to the worthlessness of such motor vehicle and after compliance with subsection (2) of this section and Section 63-23-9. An abandoned motor vehicle as defined by Section 63-23-3(b) shall not be sold at auction until thirty (30) days from date of removal from a public street, road or highway.

(2) The person authorized to execute the sale or disposal of an abandoned motor vehicle shall notify, within ten (10) days of receipt of such vehicle, any Mississippi lienholder on such vehicle that unless a claim on the vehicle is

made within thirty (30) days of such notice, the vehicle will be sold or destroyed.

(3) After the sale of any vehicle as set out hereinabove is made, the person or officer designated and making the sale of such property shall promptly upon completion of the sale deliver to the chancery clerk a list or itemization of the property sold, the amount paid for each item, the person to whom each item was sold, and all moneys received from such sale, the gross charges levied by the person making the sale against the property sold and the net amount paid over to the chancery clerk. Any sale made by any person, officer, corporation or association, shall have attached to the report of sale a sworn statement certifying as to the date such personal property or items sold first came into his possession or was abandoned on his premises and the date said personal property or item was sold.

(4) The proceeds of the sale in excess of repair, towing and storage expenses and all expenses incurred in connection with a sale when a sale is made under the provisions of this chapter, shall escheat to the county and shall be paid over to the chancery clerk to be placed into the general fund of the county in which the vehicle is abandoned. However, in those municipalities availing themselves of the provisions of Section 21-39-21, the proceeds of the sale in excess of the repairs, towing, storage or other necessary expenses incurred shall escheat to the general fund of the municipality.

HISTORY: Codes, 1942, §§ 8125-102, 8125-103; Laws, 1970, ch. 481, §§ 2, 3; Laws, 1974, ch. 448, § 2; Laws, 1990, ch. 410, § 1, eff from and after July 1, 1990.

Cross References — Bidding for forfeited beverages and property under alcoholic beverages control law, see § 67-1-18.

OPINIONS OF THE ATTORNEY GENERAL

If the Department of Public Safety seizes vehicles pursuant to Section 41-29-153 and it decides not to seek forfeiture of the vehicles and notifies the owners to come and get them, if the owners fail to retrieve their vehicles, the Department of Public Safety may not treat the vehicles as abandoned vehicles as defined in Section 63-23-3 and may not dispose of them pursuant to this section. Head, August 23, 1995, A.G. Op. #95-0553.

Municipalities cannot immobilize a vehicle for five days and then declare it to be abandoned and sell it; however, if vehicles remain at the impoundment lot or other storage facility for the required 120 days, after due notice has been provided to the owner, they may be deemed abandoned and sold. Pace, March 10, 2000, A.G. Op. #2000-0111.

RESEARCH REFERENCES

ALR.

Garagemen's lien: modern view as to validity of statute permitting sale of vehicle without hearing. 64 A.L.R.3d 814.

§ 63-23-7. Determination of status of vehicle under title law prior to disposition of vehicle.

Prior to disposition of an abandoned motor vehicle any automobile dealer, wrecker service or repair service owner, or any person on whose property such a vehicle is lawfully towed at the written request of a law enforcement officer, shall inquire of the State Tax Commission as to status of the vehicle in regard to the Mississippi Motor Vehicle Title Law. Said inquiry shall provide the description of the vehicle including the vehicle identification number. Upon request of the State Tax Commission, satisfactory evidence must be furnished as to abandonment in compliance with this chapter. Upon receipt of notification of the foregoing, the State Tax Commission shall advise any automobile dealer, wrecker service or repair service owner, or any person on whose property such a vehicle is lawfully towed at the written request of a law enforcement officer, of proper titling procedures, where indicated, depending upon method of disposition of the vehicle.

HISTORY: Codes, 1942, § 8125-102; Laws, 1970, ch. 481, § 2, eff 60 days after passage (approved April 6, 1970); Laws, 2001, ch. 596, § 70, eff from and after July 1, 2001.

Editor's Notes — The Office of Motor Vehicle Comptroller has been abolished and the functions transferred to the State Tax Commission and the Mississippi Department of Transportation. See § 27-5-153 for description of transfer of functions.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 63-23-9. Notification of registered owner and lienholders of record prior to disposition of vehicle.

The last-known registered owner of an abandoned motor vehicle and all lienholders of record, when such information is reasonably obtainable, shall be notified by registered or certified mail that such vehicle will be sold pursuant to the provisions of this chapter. Said notice shall give such owner and lienholders the date, time and place of sale and name of the person or party who has custody of such vehicle.

If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by three publications once each week for three consecutive weeks in a newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this chapter.

HISTORY: Codes, 1942, § 8125-102; Laws, 1970, ch. 481, § 2, eff 60 days after passage (approved April 6, 1970).

Cross References — Compliance with provisions of this section prior to sale of vehicle, see § 63-23-5.

Notice of forfeiture proceedings under alcoholic beverage control law to owner or secured party, see § 67-1-93.

§ 63-23-11. Claim of vehicle prior to sale.

Any person proving ownership or any lienholder may claim subject motor vehicle at any time prior to sale by paying towing, repair, storage and other necessary expenses incurred.

HISTORY: Codes, 1942, § 8125-102; Laws, 1970, ch. 481, § 2, eff 60 days after passage (approved April 6, 1970).

RESEARCH REFERENCES

ALR.

State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways. 32 A.L.R.4th 728.

CHAPTER 25.

MOTOR VEHICLE CHOP SHOP, STOLEN AND ALTERED PROPERTY ACT

Sec.
63-25-1. Short title.
63-25-3. Definitions.
63-25-5. Offenses and penalties.
63-25-7. Seizure of property.
63-25-9. Forfeiture of property.
63-25-11. Civil proceedings against offenders.
63-25-13. Scrap processors to maintain records identifying owners and vehicle identification numbers; law enforcement agencies authorized to inspect records and vehicles; penalties.

§ 63-25-1. Short title.

Sections 63-25-1 through 63-25-11 shall be known and may be cited as the "Motor Vehicle Chop Shop, Stolen and Altered Property Act."

HISTORY: Laws, 1989, ch. 469, § 1, eff from and after July 1, 1989.

Editor's Notes — Laws, 1989, ch. 469, § 10, provides as follows:

"SECTION 10. If any section, paragraph, sentence, clause, phrase or any part of this act shall be held invalid or unconstitutional, such holding shall not affect any other section, paragraph, sentence, clause, phrase or part of this act which is not in and of itself invalid or unconstitutional. Moreover, if the application of this act, or of any portion of it, to any person or circumstance is held invalid, the invalidity shall not affect the application of this act to other persons or circumstances which can be given effect without the invalid provision or application."

RESEARCH REFERENCES

ALR.

Criminal liability, under state law, concerning illegal removal or alteration of vehicle identification number, including sale or possession of altered motor vehicles or parts. 107 A.L.R.5th 567.

§ 63-25-3. Definitions.

As used in Sections 63-25-1 through 63-25-11, the following terms shall have the meaning ascribed to them herein:

(a) "Chop shop" means any building, lot or other premise where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling or knowingly storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud or conspiracy to defraud, in order to either:

(i) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identity, including the vehicle identification number of such motor vehicle or motor vehicle part in order to misrepresent the identity of such motor vehicle or motor vehicle part, or to prevent the identification of such motor vehicle or motor vehicle part; or

(ii) Sell or dispose of such motor vehicle or motor vehicle part.

(b) "Motor vehicle" includes every device in, upon or by which any person or property is or may be transported or drawn upon a highway, which is self-propelled or which may be connected to and towed by a self-propelled device, and shall also include any and all other land-based devices which are self-propelled but which are not designed for use upon a highway, including, but not limited to, farm machinery, construction equipment, all-terrain vehicles and off-road vehicles.

(c) "Person" includes a natural person, company, corporation, unincorporated association, partnership, professional corporation and any other legal entity.

(d) "Unidentifiable" means that the uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques, or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.

(e) "Vehicle identification number" means a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof, used by the manufacturer for the purpose of uniquely identifying a motor vehicle or a motor vehicle part.

HISTORY: Laws, 1989, ch. 469, § 2; Laws, 2016, ch. 382, § 1, eff from and after July 1, 2016.

§ 63-25-5. Offenses and penalties.

(1) Any person who knowingly and intentionally: (a) owns, operates or conducts a chop shop; (b) transports any motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop; or (c) sells, transfers, purchases or receives any motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than fifteen (15) years and by a fine of not more than One Hundred Thousand Dollars ($100,000.00).

(2) Any person who knowingly alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates or knowingly removes a vehicle identification number with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five (5) years and by a fine of not more than Five Thousand Dollars ($5,000.00).

(3)(a) Any person who buys, disposes, sells, transfers or possesses a motor vehicle or motor vehicle part with the knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated or removed shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five (5) years and by a fine of not more than Five Thousand Dollars ($5,000.00).

(b) The provisions of this subsection shall not apply to a motor vehicle scrap processor who, in the normal legal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting or other similar methods, provided that any vehicle identification number has not been removed from the motor vehicle or motor vehicle part prior to or during any such processing.

(c) The provisions of this subsection shall not apply to any owner or authorized possessor of a motor vehicle or motor vehicle part which has been recovered by law enforcement authorities after having been stolen or where the condition of the vehicle identification number of the motor vehicle or motor vehicle part is known to or has been reported to law enforcement authorities. It shall be presumed that law enforcement authorities have knowledge of all vehicle identification numbers on a motor vehicle or motor vehicle part which are altered, counterfeited, defaced, disguised, falsified, forged, obliterated or removed when law enforcement authorities deliver or return the motor vehicle or motor vehicle part to its owner or authorized possessor after it has been recovered by law enforcement authorities after having been reported stolen.

(4) Any person who is convicted of a second or subsequent offense under this section shall be imprisoned for a term up to twice the term authorized for a first offense and shall be fined an amount up to twice the amount authorized for a first offense.

(5)(a) In addition to any other punishment, a person convicted of a violation of this section shall be ordered to make restitution to the lawful owner or owners of the stolen motor vehicle or vehicles or the stolen motor vehicle part or parts, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

(b) Financial loss shall include, but not be limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs and claims payments. "Lawful owner" shall include an innocent bona fide purchaser for value of a stolen motor vehicle or stolen motor vehicle part who does not know that the motor vehicle or part is stolen; or an insurer to the extent that such insurer has compensated a bona fide purchaser for value.

(c) The court shall determine the extent and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In any such case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

HISTORY: Laws, 1989, ch. 469, § 3; Laws, 1993, ch. 468, § 1; Laws, 2000, ch. 495, § 1, eff from and after July 1, 2000.

Cross References — Seizure of property, see § 63-25-7.
Forfeiture of property, see § 63-25-9.
Civil liabilities for violations of this section, see § 63-25-11.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any violation of Title 63, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficiency of the evidence.

1. In general.

Conviction of defendant for individual operation of chop shop violated double jeopardy under *Blockburger* test, as defendant was convicted of operating the same chop shop on different days, and was convicted of joint operation of chop shop; operation of chop shop is continuing offense when based on same evidence, and offenses of individual and joint operation of chop shop arose from single transaction, same evidence, and same proof. White v. State, 702 So. 2d 107, 1997 Miss. LEXIS 605 (Miss. 1997).

2. Sufficiency of the evidence.

Defendant's conviction for possession of a motor vehicle with an altered VIN was supported by evidence of defendant's difficulty in obtaining a license plate for the truck and the officer's testimony regarding the unusual physical appearance of the sticker VIN. Harris v. State, 311 So. 3d 638, 2020 Miss. App. LEXIS 499 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 832, 2021 Miss. LEXIS 32 (Miss. 2021).

RESEARCH REFERENCES

ALR.

Criminal liability, under state law, concerning illegal removal or alteration of vehicle identification number, including sale or possession of altered motor vehicles or parts. 107 A.L.R.5th 567.

§ 63-25-7. Seizure of property.

(1) Any motor vehicle or motor vehicle part with vehicle identification numbers or marks which have been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated or removed may be seized and detained by law enforcement officials for a determination of the true identity of such property. Any such property seized by law enforcement officials, when ownership cannot be determined, shall be contraband and subject to forfeiture.

(2) Any tool, implement or instrumentality used or possessed in connection with any violation of Section 63-25-5, may be seized by a member of a state or local law enforcement agency upon process issued by any court of competent jurisdiction.

(3) Seizure of property described in subsections (1) or (2) of this section may be made by a member of a state or local law enforcement agency without process:

(a) If in accordance with any applicable law or regulation;

(b) If the seizure is incident to inspection under an administrative inspection;

(c) If the seizure is incident to search made under a search warrant;

(d) If the seizure is incident to a lawful arrest;

(e) If the seizure is made pursuant to a valid consent to search;

(f) If the property seized has been the subject of a prior judgment in favor of the state in a criminal proceeding, or in an injunction or forfeiture proceeding pursuant to Sections 63-25-1 through 63-25-11;

(g) If there are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety; or

(h) If the property is a motor vehicle or motor vehicle part seized pursuant to subsection (1) of this section.

(4) When property is seized pursuant to this section, the seizing agency may remove the property to a place selected and designated by the seizing agency.

(5) No civil liability shall be attached to any law enforcement officer acting in good faith in regard to the seizure and forfeiture of motor vehicles, motor vehicle parts, tools, implements or instrumentalities pursuant to Sections 63-25-1 through 63-25-11.

HISTORY: Laws, 1989, ch. 469, § 4, eff from and after July 1, 1989.

Cross References — Forfeiture of property, see § 63-25-9.

JUDICIAL DECISIONS

1. In general.

Phrase "when ownership cannot be determined" made it clear that the legislature did not intend to allow the seizure and forfeiture of private property where the owner was known; a finding that ownership could not be determined was a precursor to a valid forfeiture under the statute. Bradley v. Tishomingo County, 810 So. 2d 600, 2002 Miss. LEXIS 104 (Miss. 2002).

The highway patrol had no authority to deliver a stolen pickup truck, which had an altered vehicle identification number and had been seized from an innocent purchaser pursuant to a valid search warrant, to an insurance company, which had paid the owner the full value of the truck under a theft loss insurance policy and was therefore the lawful owner of the vehicle, absent court approval with no advance notice to the innocent purchaser of its intent to do so and without giving him an opportunity contest the matter in a court of competent jurisdiction; the appropriate procedure would have been for the highway patrol, once the truck served no further purpose in the criminal investigation or prosecution, to make a motion in the justice court for authority to release it to the insurance company, and to give the innocent purchaser and the insurance company reasonable notice of such application and an opportunity to be heard; however, the circuit court erred in directing return of the pickup truck to the innocent purchaser without making the insurance company a party to the hearing or giving it any notice of the proceeding, as this was a blatant violation of the insurance company's right to due process. Newman v. Stuart, 597 So. 2d 609, 1992 Miss. LEXIS 121 (Miss. 1992).

OPINIONS OF THE ATTORNEY GENERAL

Filing of forfeiture is not required where ownership of seized motor vehicles cannot be determined. Turner, Feb. 18, 1993, A.G. Op. #92-0937.

§ 63-25-9. Forfeiture of property.

(1) The following items shall be subject to forfeiture unless obtained by theft, fraud or conspiracy to defraud and the rightful owner of the items is known or can be identified and located: (a) any tool, (b) any implement, or (c) any instrumentality, including but not limited to any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of Section 63-25-5 or to promote and facilitate a violation of Section 63-25-5.

(2) Any motor vehicle, other conveyance or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section where the owner or other person in charge of the motor vehicle, other conveyance or motor vehicle part is a consenting party to a violation of Section 63-25-5.

(3) Any motor vehicle, motor vehicle part, other conveyance, tool, implement or instrumentality is not subject to forfeiture under this section by reason of any act or omission which the owner proves to have been committed or omitted without the owner's knowledge or consent.

(4)(a) Seizing agencies shall utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identity of any other person having a right or interest in a seized motor vehicle or motor vehicle part. In its reasonable identification and owner location attempts, the seizing agency shall cause the stolen motor vehicle files of the Highway Safety Patrol to be searched for information on motor vehicles similar to the seized motor vehicle or consistent with the seized motor vehicle part.

(b) Where a motor vehicle or motor vehicle part has an apparent value in excess of One Thousand Dollars ($1,000.00), the seizing agency shall:

(i) Consult with an expert specially trained and experienced in motor vehicle theft investigative procedures and motor vehicle identification techniques; and

(ii) Request searches of the on-line and off-line files of the National Crime Information Center (NCIC) and the National Automobile Theft Bureau (NATB) when the Highway Safety Patrol's files have been searched with negative results.

(5) Forfeiture of a motor vehicle, motor vehicle part or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party where the secured party neither had knowledge of nor consented to the act or omission forming the ground for forfeiture; provided, however, that a forfeiture shall not be subject to the interest of any secured party if the property involved in the forfeiture is a motor vehicle or motor vehicle part seized pursuant to Section 63-25-7(1) and ownership cannot be determined.

(6) Property described in subsection (1) of this section which is seized and held for forfeiture shall not be subject to replevin and is subject only to the order and judgments of a court of competent jurisdiction hearing the forfeiture proceedings.

(7)(a) The seizing agency's attorney or the district attorney in the county in which the seizure occurs may bring an action for forfeiture in a court of competent jurisdiction. The forfeiture action shall be brought within sixty (60) days from the date of seizure. Except when the ownership of the property involved in the forfeiture is a motor vehicle or motor vehicle part seized pursuant to Section 63-25-7(1) and ownership cannot be determined, the prosecutor, may, in the sound exercise of discretion, decide not to bring a forfeiture action because of the rights of property owners, lienholders or secured creditors, or because of exculpatory, exonerating or mitigating facts and circumstances.

(b) The clerk of court shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding and instructions on how the action for forfeiture may be contested to each person whose right, title or interest is of record in the State Tax Commission or any department or agency of any other state or territory of the United States or of the federal government if such property is required to be registered in any such department or agency.

(c) Notice of the proceeding shall be given to any such other person as may appear, from the facts and circumstances, to have any right, title or interest in or to the property.

(d) The owner of the property, or any person having or claiming right, title or interest in the property, may, within fourteen (14) days after the mailing of such notice, file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.

(e) The prosecutor shall show at a forfeiture hearing by a preponderance of the evidence that such property was used in the commission of a violation of Section 63-25-5, or was used or possessed to facilitate such violation or was seized pursuant to Section 63-25-7(1) and ownership cannot be determined.

(f) The owner of property may show by a preponderance of the evidence that he did not know, and did not have reason to know, that the property was to be used or possessed in the commission of any violation or that any of the exceptions to forfeiture are applicable.

(g) Unless the prosecutor shall make the required showing, the court shall order the property released to the owner. Where the prosecutor has made such a showing, the court may order:

(i) That the property be destroyed by the agency that seized it or by some other agency designated by the court;

(ii) That the property be delivered and retained for use by the agency which seized it or some other agency designated by the court; or

(iii) That the property may be sold at public auction as provided in subsection (11).

(8) A copy of a forfeiture order shall be filed with the sheriff of the county in which the forfeiture occurs and with each federal or state department or agency with which such property is required to be registered. Such order, when filed, constitutes authority for the issuance, to the agency to whom the property is delivered and retained for use, of a certificate of title, registration certificate or other special certificate as may be required by law considering the condition of the property.

(9) No motor vehicle which has been seized pursuant to Section 63-25-7 or forfeited or sold at public auction pursuant to this section shall be released by the seizing agency, used by an agency designated by the court, or sold at public auction unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated or removed vehicle identification number is corrected by the issuance and affixing of either an assigned or replacement vehicle identification number plate as may be appropriate.

(10) Seizing agencies shall utilize their best efforts to arrange for the towing and storing of motor vehicles and motor vehicle parts in the most economical manner possible. In no event shall the owner of a motor vehicle or a motor vehicle part be required to pay more than the minimum reasonable costs of towing and storage.

(11) Property that has been ordered sold pursuant to subsection (7)(iii) shall be sold at public auction for cash by the chief law enforcement officer of the seizing agency or his designee to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to the sale, in a newspaper having a general circulation within the jurisdiction of the seizing agency. The legal notice shall contain a description of the property to be sold and a statement of the time and place of sale. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lien holder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall accrue to the seizing agency.

(12) A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable shall be held subject to the order of the court in which the criminal action is pending or, if a request for its release from such custody is made, until the district attorney has notified the defendant or the defendant's attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination, which in no event shall exceed fourteen (14) days from the date of service upon the defense of the notice of request for return of property as provided herein, the property shall be released to the person making such request after satisfactory proof such person is entitled to the possession thereof. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

(13) When a seized motor vehicle is forfeited, restored to its owner or otherwise disposed of, the seizing agency shall retain a report of the transaction for a period of at least one (1) year from the date of the transaction.

HISTORY: Laws, 1989, ch. 469, § 5; Laws, 1993, ch. 495, § 1, eff from and after Jan 1, 1994.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

OPINIONS OF THE ATTORNEY GENERAL

When a piece of property is ordered forfeited by the court to the sheriff's department, the property should be entered upon the county property rolls in the same manner as other county property being used by the sheriff's department; once the property has been placed upon the property rolls of the county, said property may be sold or traded or disposed of or otherwise used in the identical manner as other sheriff department property originally purchased with county funds or used by any other county agency or department "designated by the court." Keenum, Mar. 19, 1992, A.G. Op. #92-0175.

Under Miss. Code Section 63-25-9(4), where law enforcement officers cannot in and of themselves make final determination as to ownership of vehicle, they must consult with experts. Turner, Feb. 18, 1993, A.G. Op. #92-0937.

With respect to motor vehicles, Miss. Code Section 63-25-9(7)(a) mandates filing of forfeiture proceeding, except for motor vehicles seized under Miss. Code Section 63-25-7(1) where ownership of that vehicle cannot be determined. Turner, Feb. 18, 1993, A.G. Op. #92-0937.

Section 63-25-9(7)(c) requires notice be sent to any person that may appear to have any right, title or interest in or to property and since contraband motor vehicles are forfeited to seizing agency under 63-25-9(7)(g)(ii) as one of two alternatives, seizing agency has right or interest in property as set forth in 63-25-9(7)(c) and notice should therefore be sent to each seizing agency of forfeiture proceedings. Head, August 18, 1993, A.G. Op. #93-0286.

The statute mandates the forfeiture of a motor vehicle/motor vehicle part seized pursuant to Section 63-25-7(1) where ownership cannot be determined. Mitchell, III, April 7, 2000, A.G. Op. #2000-0157.

Vehicles ordered by a court to be sold at auction should be released by the seizing agency to the purchaser even if the ownership cannot be determined, provided the purchaser of the vehicle obtains an assigned or replacement vehicle identification plate number. Mitchell, III, April 7, 2000, A.G. Op. #2000-0157.

A seized motor vehicle whose ownership cannot be determined may only be disposed of as provided in subsection (7)(g). Mitchell, III, April 7, 2000, A.G. Op. #2000-0157.

§ 63-25-11. Civil proceedings against offenders.

(1) Any district attorney or any aggrieved person may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation of subsections (1) and (2) of Section 63-25-5. If the plaintiff in such a proceeding proves the alleged violation or its threat, by a preponderance of the evidence, any court of competent jurisdiction after due provision for the rights of innocent persons may grant relief by entering any appropriate order or judgment including but not limited to:

(a) Ordering any defendant to be divested of any interest in any property;

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;

(c) Ordering the suspension or revocation of a license, permit or prior approval granted by any public agency or any other public authority; or

(d) Ordering the surrender of the charter of a corporation organized under the laws of this state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by Sections 63-25-1 through 63-25-11 and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked.

(2) In a proceeding under this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury shall be required to be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

(3) Any person injured, directly or indirectly, by conduct constituting a violation by any person of Section 63-25-5 shall, in addition to any other relief, have a cause of action for threefold the actual damages sustained by the person.

(4) A final judgment or decree rendered against the defendant in any civil or criminal proceeding shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to the civil or criminal proceeding.

(5) Personal service of any process in an action under this section may be made upon any person outside the state if the person has engaged in any conduct constituting a violation of Section 63-25-5 in this state. The person shall be deemed to have thereby submitted to the jurisdiction of the courts of this state for the purposes of this provision.

(6) Obtaining any civil remedy under this section shall not preclude obtaining any other civil or criminal remedy under either this chapter or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

HISTORY: Laws, 1989, ch. 469, § 6, eff from and after July 1, 1989.

§ 63-25-13. Scrap processors to maintain records identifying owners and vehicle identification numbers; law enforcement agencies authorized to inspect records and vehicles; penalties.

Repealed by Laws, 2011, ch. 451, § 4, effective July 1, 2011.

§ 63-25-13. [Laws, 2000, ch. 495, § 2, eff from and after July 1, 2000.]

Editor's Notes — Former § 63-25-13 required scrap processors to maintain records identifying owners and vehicle identification numbers, authorized law enforcement agencies to inspect the records and vehicles and provided penalties for violations of the section.

CHAPTER 27.

DISCLOSURE OF USE OF NONORIGINAL REPLACEMENT PARTS

Sec.
63-27-1. Definitions.
63-27-3. Identification of manufacturer on part.
63-27-5. Disclosure of use of nonoriginal replacement parts in repair estimate.
63-27-7. Construction of chapter.

§ 63-27-1. Definitions.

As used in this chapter, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels.

(b) "Installer" means an individual who performs the work of replacing or repairing parts of a motor vehicle.

(c) "Insurer" includes an insurance company and any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.

(d) "Nonoriginal equipment manufacturer aftermarket crash part" means an aftermarket crash part made by any manufacturer other than the original vehicle manufacturer or his supplier.

(e) "Repair facility" means a motor vehicle dealer, garage, body shop or other commercial entity which undertakes the repair or replacement of those parts that generally constitute the exterior of a motor vehicle.

HISTORY: Laws, 1990, ch 330, § 1, eff from and after July 1, 1990.

§ 63-27-3. Identification of manufacturer on part.

Any nonoriginal equipment manufacturer aftermarket crash part manufactured or supplied for use in this state on or after January 1, 1991, shall have affixed thereto or inscribed thereon the logo, identification number, or name of its manufacturer. Such manufacturer's logo, identification number or name shall be visible after installation whenever practicable.

HISTORY: Laws, 1990, ch. 330, § 2, eff from and after July 1, 1990.

§ 63-27-5. Disclosure of use of nonoriginal replacement parts in repair estimate.

In all instances where nonoriginal equipment manufacturer aftermarket crash parts are used in preparing an estimate for repairs, the written estimate prepared by the insurer and repair facility shall clearly identify each such part.

A disclosure document attached to the estimate shall contain the following information in no smaller than ten-point type:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AFTERMARKET CRASH PARTS SUPPLIED BY A SOURCE OTHER THAN THE MANUFACTURER OF YOUR MOTOR VEHICLE. THE AFTERMARKET CRASH PARTS USED IN THE PREPARATION OF THIS ESTIMATE ARE WARRANTED BY THE MANUFACTURER OR DISTRIBUTOR OF SUCH PARTS RATHER THAN THE MANUFACTURER OF YOUR VEHICLE.

HISTORY: Laws, 1990, ch. 330, § 3, eff from and after July 1, 1990.

§ 63-27-7. Construction of chapter.

The provisions of this chapter are severable. If any part of this chapter is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

HISTORY: Laws, 1990, ch. 330, § 4, eff from and after July 1, 1990.

CHAPTER 29.

MISSISSIPPI VEHICLE PROTECTION PRODUCT ACT

Sec.

63-29-1. Short title.

63-29-3. Definitions.

63-29-5. Scope; exemptions.

63-29-7. Registration and filing requirements of warrantors; fees; renewal of registration.

63-29-9. Warrantor required to prove financial solvency or be insured under warranty insurance policy meeting certain conditions.

63-29-11. Warranty reimbursement insurance policy requirements.

63-29-13. Disclosure to warranty holder; contents.

63-29-15. Disclosure of terms and conditions governing cancellation of sale and warranty; cancellation of warranty only under certain conditions.

63-29-17. Prohibited acts of warrantors.

63-29-19. Record keeping; contents of warrantor's accounts, books, records.

63-29-21. Examination of warrantors by Motor Vehicle Commission; enforcement of and penalties for violations of this chapter.

63-29-23. Service of process.

63-29-25. Rules and regulations.

63-29-27. Applicability of chapter.

63-29-29. Effect of chapter on existing vehicle protection product warranties.

§ 63-29-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Vehicle Protection Product Act."

HISTORY: Laws, 2007, ch. 486, § 1, eff from and after July 1, 2007.

§ 63-29-3. Definitions.

As used in this section:

(a) "Administrator" means a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties.

(b) "Motor Vehicle Commission" means the Mississippi Motor Vehicle Commission.

(c) "Incidental costs" means expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees and mechanical inspection fees.

(d)(i) "Vehicle protection product" means a vehicle protection device, system or service that:

1. Is installed on or applied to a vehicle;

2. Is designed to prevent loss or damage to a vehicle from a specific cause; and

3. Includes a written warranty.

(ii) Any product offered without a warranty shall not be considered a vehicle protection product and shall not be covered by the provisions of this chapter.

(e) The term "vehicle protection device, system or service" shall include, without limitation, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches and electronic, radio and satellite tracking devices.

(f) "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, then the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty.

(g) "Vehicle protection product warrantor" or "warrantor" means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement. "Warrantor" does not include an authorized insurer.

(h) "Warranty holder" means the person who purchases a vehicle protection product or who is a permitted transferee.

(i) "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties sold by the warrantor.

HISTORY: Laws, 2007, ch. 486, § 2, eff from and after July 1, 2007.

Cross References — Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

§ 63-29-5. Scope; exemptions.

(1) No vehicle protection product may be sold or offered for sale in this state unless the seller, warrantor and administrator, if any, comply with the provisions of this chapter.

(2) A vehicle protection product warranty provided or sold in compliance with this chapter is not a contract of insurance.

(3) Warranties, indemnity agreements and guarantees that are not provided as a part of a vehicle protection product are not subject to the provisions of this chapter.

HISTORY: Laws, 2007, ch. 486, § 3, eff from and after July 1, 2007.

§ 63-29-7. Registration and filing requirements of warrantors; fees; renewal of registration.

(1) A person may not operate as a warrantor or represent to the public

that the person is a warrantor unless the person is registered with the Motor Vehicle Commission on a form prescribed by the Motor Vehicle Commission.

(2) Warrantor registration records shall be filed annually and shall be updated by the warrantor within thirty (30) days of any change. The registration records shall contain the following information:

(a) The warrantor's name, any other names under which the warrantor does business in the state, principal office address and telephone number;

(b) The names of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business;

(c) The name, address and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this state;

(d) A copy of the warranty reimbursement insurance policy or policies or other financial information required by Section 63-29-11 below;

(e) A copy of each warranty the warrantor proposes to use in this state; and

(f) A statement indicating under which provision of Section 63-29-9 that the warrantor qualifies to do business in this state as a warrantor.

(3) The Motor Vehicle Commission may charge each registrant a reasonable fee to offset the cost of processing the registration and maintaining the records. Such fee shall be set by the Motor Vehicle Commission in an amount not to exceed the amount necessary to defray the Motor Vehicle Commission's expenses in administering this chapter.

(4) If a registrant fails to register by the renewal deadline, the Motor Vehicle Commission shall give the registrant written notice of the failure and the registrant will have thirty (30) days to complete the renewal of the registration before the registration is revoked. Revocation for failure to renew a registration does not require any additional notice or a hearing.

(5) An administrator or person who sells or solicits a sale of a vehicle protection product but who is not a warrantor shall not be required to register as a warrantor or be licensed under the insurance laws of this state to sell vehicle protection products.

HISTORY: Laws, 2007, ch. 486, § 4, eff from and after July 1, 2007.

Cross References — Motor Vehicle Commission generally, see § 63-17-51 et seq.

§ 63-29-9. Warrantor required to prove financial solvency or be insured under warranty insurance policy meeting certain conditions.

(1) No vehicle protection product shall be sold or offered for sale in this state unless the vehicle protection product warrantor can prove financial solvency as provided under subsection (2) of this section or is insured under a warranty insurance policy meeting the following conditions in order to ensure adequate performance under the warranty:

(a) The warranty reimbursement insurance policy is issued by an insurer authorized to do business in this state and provides that the insurer will pay to, or on behalf of, the warrantor one hundred percent (100%) of all sums that the warrantor is legally obligated to pay according to the warrantor's contractual obligations under the warrantor's vehicle protection product warranty;

(b) A true and correct copy of the warranty reimbursement insurance policy has been filed with the Motor Vehicle Commission by the warrantor; and

(c) The policy contains the provisions required by Section 63-29-11.

(2) As an alternative to warranty reimbursement insurance under subsection (1) of this section, the vehicle's protection warrantor or its parent company must:

(a) Maintain a net worth of stockholders' equity of Fifty Million Dollars ($50,000,000.00); and

(b) Provide the Motor Vehicle Commission with a copy of the warrantor's or the warrantor's parent company's most recent Form 10-K or Form 20-F filed with the Securities Exchange Commission within the last calendar year or, if the warrantor does not file with the Securities Exchange Commission, a copy of the warrantor's or the warrantor's parent company's audited financial statements that shows a net worth of the warrantor or its parent company of at least Fifty Million Dollars ($50,000,000.00). If the warrantor's parent company's Form 10-K, Form 20-F or audited financial statements are filed to meet the warrantor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the warrantor relating to the warranties issued by the warrantor in this state. The audited financial statements filed pursuant to this subsection shall be exempt from public disclosure under the Mississippi Public Records Act of 1983.

HISTORY: Laws, 2007, ch. 486, § 5, eff from and after July 1, 2007.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.
Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

§ 63-29-11. Warranty reimbursement insurance policy requirements.

No warranty reimbursement insurance policy shall be issued, sold or offered for sale in this state unless the policy meets the following conditions:

(a) The policy states that the issuer of the policy will reimburse or pay on behalf of the vehicle protection product warrantor all covered sums which the warrantor is legally obligated to pay, or will provide all service that the warrantor is legally obligated to perform according to the warrantor's contractual obligations under the provisions of the insured warranties sold by the warrantor;

(b) The policy states that in the event that payment due under the terms of the warranty is not provided by the warrantor within sixty (60) days after proof of loss has been filed according to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement;

(c) The policy provides that a warranty reimbursement insurance company that insures a warranty shall be deemed to have received payment of the premium if the warranty holder paid for the vehicle protection product and the insurer's liability under the policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer; and

(d) The policy has the following provisions regarding cancellation of the policy:

(i) The issuer of a reimbursement insurance policy shall not cancel such policy until a notice of cancellation in writing has been mailed or delivered to the Motor Vehicle Commission and each insured warrantor;

(ii) The cancellation of a reimbursement insurance policy shall not reduce the issuer's responsibility for vehicle protection products sold prior to the date of cancellation; and

(iii) In the event an insurer cancels a policy that a warrantor has filed with the Motor Vehicle Commission, the warrantor shall do either of the following:

1. File a copy of a new policy with the Motor Vehicle Commission, before the termination of the prior policy, provided that there is no lapse in coverage following the termination of the prior policy; or

2. Discontinue acting as a warrantor as of the termination date of the policy until a new policy becomes effective and is accepted by the Motor Vehicle Commission.

HISTORY: Laws, 2007, ch. 486, § 6, eff from and after July 1, 2007.

Cross References — Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

§ 63-29-13. Disclosure to warranty holder; contents.

(1) Every vehicle protection product warranty shall be written in clear, understandable language and shall be printed or typed in an easy-to-read point size and font and shall not be sold or offered for sale in the state unless the warranty:

(a) Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance.";

(b) Identifies the warrantor, the administrator (if any), the seller and the warranty holder;

(c) Sets forth the procedure for making a claim, including a telephone number;

(d) Sets forth the total purchase price and the terms under which it is to be paid, however, the purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale;

(e) Sets forth any terms, restrictions or conditions governing transferability of the warranty, if any;

(f) Conspicuously sets forth all of the obligations and duties of the warranty holder such as the duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair or other similar requirements, if any;

(g) Conspicuously states the existence of a deductible amount, if any;

(h) Specifies the payments or performance to be provided under the warranty including payments for incidental costs, the manner of calculation or determination of payments or performance and any limitations, exceptions or exclusions;

(i) Sets forth the conditions on which substitution will be allowed;

(j) Conspicuously states that the obligations of the warrantor to the warranty holder are insured under a warranty reimbursement insurance policy;

(k) Conspicuously states that, in the event a warranty holder must make a claim against a party other than the warranty reimbursement insurance policy issuer, the warranty holder is entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within sixty (60) days after proof of loss has been filed with the warrantor; and

(*l*) Conspicuously states the name and address of the issuer of the warranty reimbursement insurance policy. This information need not be preprinted on the warranty form but may be stamped on the warranty.

(2) At the time of sale, the seller or warrantor shall provide to the purchaser:

(a) A copy of the vehicle protection product warranty; or

(b) A receipt or other written evidence of the purchase of the vehicle protection product and a copy of the warranty within thirty (30) days of the date of purchase.

HISTORY: Laws, 2007, ch. 486, § 7, eff from and after July 1, 2007.

§ 63-29-15. Disclosure of terms and conditions governing cancellation of sale and warranty; cancellation of warranty only under certain conditions.

(1) No vehicle protection product may be sold or offered for sale in this state unless the vehicle protection product warranty clearly states the terms and conditions governing the cancellation of the sale and warranty, if any.

(2) The warrantor may only cancel the warranty if the warranty holder does any of the following:

(a) Fails to pay for the vehicle protection product;

(b) Makes a material misrepresentation to the seller or warrantor;

(c) Commits fraud; or

(d) Substantially breaches the warranty holder's duties under the warranty.

(3) A warrantor canceling a warranty shall mail written notice of cancellation to the warranty holder at the last address of the warranty holder in the

warrantor's records at least thirty (30) days prior to the effective date of the cancellation. The notice shall state the effective date of the cancellation and the reason for the cancellation.

HISTORY: Laws, 2007, ch. 486, § 8, eff from and after July 1, 2007.

§ 63-29-17. Prohibited acts of warrantors.

(1) Unless licensed as an insurance company, a vehicle protection product warrantor shall not use in its name, contracts or literature the words "insurance," "casualty," "surety," "mutual" or any other word that is descriptive of the insurance, casualty or surety business, or that is deceptively similar to the name or description of any insurance or surety corporation or any other vehicle protection product warrantor. A warrantor may use the term "guaranty" or a similar word in the warrantor's name.

(2) A vehicle protection product warrantor shall not make, permit or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell or advertisement of a vehicle protection product.

(3) A vehicle protection product warrantor shall not permit or cause the omission of any material statement in connection with the sale, offer to sell or advertisement of a vehicle protection product.

(4) A vehicle protection product warrantor shall not make, permit or cause any false or misleading statements, either oral or written, about the performance required or payments that may be available under the vehicle protection product warranty.

(5) A vehicle protection product warrantor shall not make, permit or cause any statement or practice that has the effect of creating or maintaining a fraud.

(6) A vehicle protection product seller or warrantor may not require as a condition of sale or financing that a retail purchaser of a motor vehicle purchase a vehicle protection product that is not installed on the motor vehicle at the time of sale.

HISTORY: Laws, 2007, ch. 486, § 9, eff from and after July 1, 2007.

§ 63-29-19. Record keeping; contents of warrantor's accounts, books, records.

(1) All vehicle protection product warrantors shall keep accurate accounts, books and records concerning transactions regulated under this chapter.

(2) A vehicle protection product warrantor's accounts, books and records shall include:

(a) Copies of all vehicle protection product warranties;

(b) The name and address of each warranty holder; and

(c) The dates, amounts and descriptions of all receipts, claims and expenditures.

(3) A vehicle protection product warrantor shall retain all required accounts, books and records pertaining to each warranty holder for at least two (2) years after the specified period of coverage has expired. A warrantor discontinuing business in the state shall maintain its records until it furnishes the Motor Vehicle Commission satisfactory proof that it has discharged all obligations to warranty holders in this state.

(4) Vehicle protection product warrantors shall make all accounts, books and records concerning transactions regulated under this chapter available to the Motor Vehicle Commission for the purpose of examination.

HISTORY: Laws, 2007, ch. 486, § 10, eff from and after July 1, 2007.

Cross References — Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

§ 63-29-21. Examination of warrantors by Motor Vehicle Commission; enforcement of and penalties for violations of this chapter.

(1)(a) The Motor Vehicle Commission may conduct examinations of warrantors, administrators or other persons to enforce this chapter and protect warranty holders in this state. Upon request of the Motor Vehicle Commission, a warrantor shall make available to the Motor Vehicle Commission all accounts, books and records concerning vehicle protection products sold by the warrantor that are necessary to enable the Motor Vehicle Commission to reasonably determine compliance or noncompliance with this chapter.

(b) Any person or entity examined shall pay any and all appropriate and reasonable costs incurred by the Motor Vehicle Commission during the examination, including, but not limited to, the compensation of such experts, actuaries, examiners or other persons as may be contracted for by the Motor Vehicle Commission or the Motor Vehicle Commission's designated appointee for the purpose of assisting in the examination. Such compensation shall be fixed at a reasonable amount commensurate with usual compensation for like services and shall be contracted for in accordance with applicable state contracting procedures, if applicable.

(2) The Motor Vehicle Commission may take action that is necessary or appropriate to enforce the provisions of this chapter and the Motor Vehicle Commission's rules and orders and to protect warranty holders in this state. If a person or entity violates this chapter and the Motor Vehicle Commission reasonably believes such violation threatens to cause irreparable loss or injury to the property or business of any person or company located in this state, the Motor Vehicle Commission may:

(a) Issue an order directed to that warrantor to cease and desist from engaging in further acts, practices or transactions that are causing the conduct;

(b) Issue an order prohibiting that warrantor from selling or offering for sale vehicle protection products in violation of this chapter;

(c) Issue an order imposing a civil penalty on that warrantor; or

(d) Issue any combination of paragraphs (a) through (c) of this subsection, as applicable.

(3) The Motor Vehicle Commission may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of this chapter or of the Motor Vehicle Commission's orders or rules. An action filed under this section also may seek restitution on behalf of persons aggrieved by a violation of this chapter or orders or rule of the Motor Vehicle Commission.

(4) A person or entity who is found to have violated this chapter or orders or rules of the Motor Vehicle Commission may be ordered to pay to the Motor Vehicle Commission a civil penalty in an amount, determined by the Motor Vehicle Commission, of not more than Five Hundred Dollars ($500.00) per violation and not more than Ten Thousand Dollars ($10,000.00) in the aggregate for all violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action or practice, irrespective of the number of times the conduct, action or practice is determined to be a violation of this chapter.

HISTORY: Laws, 2007, ch. 486, § 11, eff from and after July 1, 2007.

Cross References — Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

§ 63-29-23. Service of process.

(1) Any warrantor doing business in this state in accordance with this chapter shall be deemed to have appointed the Motor Vehicle Commission its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it.

(2) Any warrantor doing business in this state, operating without the authority provided by this chapter, shall be deemed to have appointed the Secretary of State to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it.

HISTORY: Laws, 2007, ch. 486, § 12, eff from and after July 1, 2007.

Cross References — General duties of the Secretary of State, see § 7-3-5.
Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

§ 63-29-25. Rules and regulations.

The Motor Vehicle Commission may adopt rules and regulations to establish procedures for implementing the provisions of this chapter as are necessary. Such rules and regulations shall include disclosures for the benefit of the warranty holder, record keeping requirements, registration fees, penalties and procedures for public complaints. Such rules and regulations shall also include the conditions under which surplus lines insurers may be rejected for the purpose of underwriting vehicle protection product warranty agreements.

HISTORY: Laws, 2007, ch. 486, § 13, eff from and after July 1, 2007.

Cross References — Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

§ 63-29-27. Applicability of chapter.

This chapter applies to all vehicle protection products sold or offered for sale on or after July 1, 2007. The failure of any person to comply with this chapter before July 1, 2007, shall not be admissible in any court proceeding, administrative proceeding, arbitration or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper.

HISTORY: Laws, 2007, ch. 486, § 14, eff from and after July 1, 2007.

§ 63-29-29. Effect of chapter on existing vehicle protection product warranties.

The adoption of this chapter does not imply that a vehicle protection product warranty constituted insurance prior to July 1, 2007.

HISTORY: Laws, 2007, ch. 486, § 15, eff from and after July 1, 2007.

CHAPTER 31.

OPERATING OFF-ROAD VEHICLES

Sec.
63-31-1. Legislative intent.
63-31-3. Requirements to operate off-road vehicle on public property; off-road vehicle safety course.

§ 63-31-1. Legislative intent.

It is the intent of the Legislature that all persons shall operate off-road vehicles in accordance with the vehicle manufacturer's guidelines.

HISTORY: Laws, 2011, ch. 465, § 1; Laws, 2013, ch. 330, § 1, eff from and after July 1, 2013.

§ 63-31-3. Requirements to operate off-road vehicle on public property; off-road vehicle safety course.

(1) No off-road vehicle shall be operated upon any public property by any person unless:

(a)(i) The person possesses a valid driver's license; or

(ii) The person possesses a certificate as provided under subsections (3) and (4) of this section.

(b) No person may operate any off-road vehicle upon any public property in this state unless each person under sixteen (16) years of age who is operating or riding on the off-road vehicle is wearing a crash helmet that complies with minimum guidelines established by the National Highway Traffic Safety Administration pursuant to the federal Motor Vehicle Safety Standard No. 218 (49 CFR 571.218) for helmets designed for use by motorcyclists.

(2) A violation of subsection (1) of this section is punishable by a fine of not less than Twenty-five Dollars ($25.00) nor more than Fifty Dollars ($50.00).

(3) Off-road vehicle safety courses shall be held by the Cooperative Extension Service using 4-H safety course materials and curricula, and shall be taught by instructors possessing qualifications approved by the Department of Public Safety. The Cooperative Extension Service shall issue a certificate to each person who satisfactorily completes the off-road vehicle safety course.

(4) Off-road vehicle safety courses may be held by any organization approved by the Department of Public Safety. Such organization shall issue a certificate to each person who satisfactorily completes the off-road vehicle safety course.

(5) For the purposes of this section:

(a) "Off-road vehicle" means any all-terrain vehicle, dirt bike or recreational off-highway vehicle. The term "off-road vehicle" shall not include electric bicycles.

(b) "All-terrain vehicle" or "ATV" means any motorized vehicle manufactured and designed exclusively for off-road use that is fifty-five (55) inches or less in width; has an unladen dry weight of one thousand (1,000) pounds or less; and travels on three (3), four (4) or more nonhighway tires. The term "all-terrain vehicle" shall not include electric bicycles.

(c) "Dirt bike" means a motor-powered vehicle possessing two (2) or more tires, designed to travel over any terrain and capable of travelling off of paved roads, whether or not the vehicle may be operated legally on a public street. The term "dirt bike" shall not include electric bicycles.

(d) "Recreational off-highway vehicle" means any motorized vehicle manufactured and designed exclusively for off-road use that is seventy-five (75) inches or less in width; has an unladen dry weight of three thousand five hundred (3,500) pounds or less; and travels on four (4) or more nonhighway tires.

(6) Nothing in this section shall be construed to authorize operation of an off-road vehicle on a public road or highway of this state.

HISTORY: Laws, 2011, ch. 465, § 2; Laws, 2012, ch. 544, § 2; Laws, 2013, ch. 330, § 2, eff from and after July 1, 2013; Laws, 2021, ch. 355, § 12, eff from and after July 1, 2021; Laws, 2022, ch. 317, § 1, eff from and after July 1, 2022.

Editor's Notes — Laws of 2012, ch. 544, § 4 provides:

"SECTION 4. Section 2 of this act shall take effect and be in force from and after July 1, 2012, and the remainder of this act shall take effect and be in force from and after its passage."

Amendment Notes — The 2021 amendment, in (5), added the last sentence in (a), (b), and (c).

The 2022 amendment, in (5), substituted "fifty-five (55)" for "fifty (50)" in (b), and substituted "seventy-five (75)" for "sixty-five (65)" and "three thousand five hundred (3,500)" for "two thousand (2,000)" in (d).

CHAPTER 32.

OPERATION OF GOLF CARTS AND LOW-SPEED VEHICLES ON MUNICIPAL PUBLIC ROADS

Sec.
63-32-1. Definitions.
63-32-3. Authorization to operate golf carts and low-speed vehicles on public roads within municipality under certain circumstances; operator requirements.
63-32-5. Golf cart and low-speed vehicle registration requirements.

§ 63-32-1 Definitions.

As used in this chapter:

(a) "Golf cart" means a motor vehicle that is designated and manufactured for operation on a golf course for sporting or recreational purposes, is not capable of exceeding speeds of twenty (20) miles per hour, and is equipped with safety equipment as required under 49 CFR Section 571.500.

(b) "Low-speed vehicle" means any four-wheeled electric or gasoline-powered vehicle that has a top speed greater than twenty (20) miles per hour but less than twenty-five (25) miles per hour and is equipped with safety equipment as required under 49 CFR Section 571.500.

HISTORY: Laws, 2021, ch. 367, § 1, eff from and after passage (approved March 17, 2021).

§ 63-32-3 Authorization to operate golf carts and low-speed vehicles on public roads within municipality under certain circumstances; operator requirements.

(1) The governing authorities of a municipality may, in their discretion, authorize the operation of golf carts and low-speed vehicles only on public roads and streets as designated by ordinance, within the corporate limits of the municipality.

(2) Golf carts and low-speed vehicles may be operated on public roads and streets upon which bicycles are authorized by law to be operated. Golf carts and low-speed vehicles may not be operated on state highways or federal highways that are not interstate highways except for the crossing of these streets, in which case the shortest traveling distance to do so shall be required. Drivers are required to operate golf carts and low-speed vehicles only in the outside lane of multilane streets and roads, where applicable.

(3) Any person operating a golf cart or low-speed vehicle on the public roads and streets under this chapter must have in his or her possession a valid driver's license or temporary driver's permit and proof of financial responsibility as required under Section 63-15-1 et seq.

HISTORY: Laws, 2021, ch. 367, § 2, eff from and after passage (approved March 17, 2021).

§ 63-32-5 Golf cart and low-speed vehicle registration requirements.

(1) Every golf cart and low-speed vehicle to be operated, as authorized under this chapter, on a public road or street shall be required to be registered with the city. Upon payment of a reasonable fee that may be charged by the city to cover the costs of administration, presentation of proof of financial responsibility and presentation of a valid driver's license or temporary driver's permit, the owner of the golf cart or low-speed vehicle shall be issued a registration decal by the county or municipal tax collector that must be displayed on the left rear fender of the vehicle. The registration shall remain valid for as long as the registering owner owns the golf cart or low-speed vehicle. The city shall provide the registrant with a map of the areas where golf carts or low-speed vehicles may be operated at the time of registration. The operator shall be required to have proof of financial responsibility and a valid driver's license in his or her possession at all times while operating the golf cart or low-speed vehicle on public roads and streets of the state.

(2) The registration fee imposed under subsection (1) of this section shall be retained by the municipal clerk and deposited into the municipal general fund.

HISTORY: Laws, 2021, ch. 367, § 3, eff from and after passage (approved March 17, 2021).

CHAPTER 33.

MISCELLANEOUS PROVISIONS

Sec.
63-33-1. Writing, sending or reading text message or reading or posting to social networking site using hand-held mobile telephone while operating vehicle prohibited; penalties.
63-33-3. Motor carrier safety improvement; use by motor carrier not to be considered in reference to individual's status as employee, independent contractor, or jointly employed employee.

§ 63-33-1. Writing, sending or reading text message or reading or posting to social networking site using hand-held mobile telephone while operating vehicle prohibited; penalties.

(1) For purposes of this section, the following terms shall have the meanings ascribed in this subsection, unless the context clearly indicates otherwise:

(a) "Hand-held mobile telephone" means a mobile telephone or other portable electronic communication device with which a user engages in a call or writes, sends or reads a text message using at least one hand. The term "hand-held mobile telephone" shall not include a voice-operated or hands-free device;

(b) "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways;

(c) "Social networking site" means any web-based service that allows individuals to construct a profile within a founded system, articulate a list of other users with whom they share a connection, and communicate with other users of the site;

(d) "Text message" includes a text-based message, instant message, electronic message, and email, but shall not include an emergency, traffic or weather alert or a message related to the operation or navigation of the motor vehicle;

(e) "Voice operated or hands-free device" means a device that allows the user to write, send, or read a text message without the use of either hand except to activate, deactivate, or initiate a feature or function; and

(f) "Writing," "sending" and "reading," with respect to a text message, means the manual entry, sending, or retrieval of a text message, respectively, to communicate with any person or device.

(2) An operator of a moving motor vehicle is prohibited from writing, sending, or reading a text message and from accessing, reading or posting to a social networking site using a hand-held mobile telephone while driving said motor vehicle.

(3) A violation of this section is a civil violation, and upon being found in violation, is punishable by a civil penalty of Twenty-five Dollars ($25.00) for

violations committed until July 1, 2016, and One Hundred Dollars ($100.00) for violations committed from and after July 1, 2016. No state assessments shall be imposed or collected for a violation under this section.

(4) The Department of Public Safety shall keep and maintain records of citations issued under this section, including the age and race of the vehicle operator, whether there was an additional traffic violation by the vehicle operator, and whether there was a crash or any damage to a vehicle or passenger at the time of the citation.

HISTORY: Laws, 2015, ch. 326, § 1, eff from and after July 1, 2015; Laws, 2018, ch. 378, § 1, eff from and after July 1, 2018.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (4) by substituting "under this section" for "under this statute." The Joint Committee ratified the correction at its August 17, 2015, meeting.

§ 63-33-3. Motor carrier safety improvement; use by motor carrier not to be considered in reference to individual's status as employee, independent contractor, or jointly employed employee.

(1) For purposes of this section, the term "motor carrier safety improvement" means any device, equipment, software, technology, procedure, training, policy, program or operational practice intended and primarily used to improve or facilitate compliance with traffic safety or motor carrier safety laws, safety of a motor vehicle, safety of the operator of a motor vehicle, or safety of third-party users of highways of this state.

(2) The deployment, implementation or use of a motor carrier safety improvement by or as required by a motor carrier or its related entity, including by contract, shall not be considered when evaluating an individual's status as an employee or independent contractor, or as a jointly employed employee, under any state law.

HISTORY: Laws, 2021, ch. 336, § 1, eff from and after July 1, 2021.

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